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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 34th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Monday, 13 July 1998, at 3 p.m.

Chairman: Mr. IVAN (Romania) (Vice-Chairman)
later: Mr. P. KIRSCH (Canada) (Chairman)

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In the absence of Mr. P. Kirsch (Canada), Mr. Ivan (Romania), Vice-Chairman, took the Chair.

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.59 and Corr.1)

Statement on behalf of the Secretary-General of the United Nations

1. **Mr. CORELL** (Representative of the Secretary-General) said that the Secretary-General was following the negotiation process very carefully and was confident of a positive outcome to the Conference. However, time was running short. Unless a solution to the major outstanding substantive issues emerged very soon, it would be difficult to assemble and coordinate all the provisions in such a way that the Statute would be ready for adoption later in the week. Many participants had been working extremely hard, in working groups and informal consultations during the Conference. However, some delegations had taken very firm positions. The Conference was engaged in creating an international institution to serve the world at large, and national positions must be harmonized in the interests of common objectives. On behalf of the Secretary-General, he urged those delegations that were still insisting on very firm positions to make every possible effort to work with other delegations to find common ground. The Secretary-General sincerely hoped that the necessary consensus would emerge, and that it would be possible to adopt the Statute of the Court during the Conference.

Part 2 of the draft Statute (*continued*)

Proposal prepared by the Bureau (*continued*)

2. **Mr. SALAND** (Sweden) said that the Bureau paper (A/CONF.183/C.1/L.59 and Corr.1) pointed towards broadly acceptable solutions.

3. He agreed that if generally acceptable provisions on the crime of aggression and treaty crimes were not found, those issues might be deferred to a review conference.

4. He could just accept option 2 in article 5 *quater* on war crimes, but not option 1. Sections C and D must fall within the jurisdiction of the Court. He found it hard to accept the deletion of the weapons clause in section D, since that could allow, for example, the use of chemical weapons in non-international armed conflicts.

5. Turning to article xx, he might possibly accept the "elements of crimes" as guidelines. The enabling resolution annexed to the Final Act should contain some kind of time limit, preferably a specific date, for their elaboration by the Preparatory Commission.

6. He strongly favoured a uniform system of jurisdiction covering all core crimes. He opposed an opt-in possibility for one or more crimes, as he saw no reason to differentiate between genocide, crimes against humanity and war crimes. Concerning preconditions to the exercise of jurisdiction, he had a strong preference for option 1 in article 7, paragraph 2, for all crimes.

7. On the Security Council and article 10, he supported option 1, perhaps with the addition of a clause on measures to preserve evidence.

8. On the Prosecutor, he strongly urged the adoption of article 12 (option 1). The safeguards mentioned in option 2 were adequately covered by article 16. Indeed, article 16 should be streamlined so as to fit with article 17.

9. **Ms. CHATOOR** (Trinidad and Tobago) said that aggression and all the treaty crimes should be included in the Statute. On war crimes (article 5 *quater*), she still preferred option 2 of the *chapeau*. She regretted the non-inclusion of nuclear weapons in section B, paragraph (o), and supported the statement made by the Islamic Republic of Iran on behalf of the Non-Aligned Movement.

10. Problems remained with regard to war crimes committed in non-international armed conflicts. The draft assumed that those crimes would fall within the jurisdiction of the Court, and thus sections C and D were no longer just options. However, the wording of the *chapeaux* was not satisfactory.

11. Article xx, paragraph 2, which provided that the elements of crimes were to be adopted by the Assembly of States Parties, did not in itself create a problem. However, she was troubled by paragraph 4, which could indefinitely delay action by the Court. In her view, the elements of crimes should serve only as guidelines.

12. The division made in article 7 between genocide on the one hand and war crimes and crimes against humanity on the other was confusing. Some further redrafting was desirable. In paragraph 2, she preferred option 1, requiring the consent of any one of four States to jurisdiction.

13. In article 7 *bis*, she preferred automatic jurisdiction in line with option I. With regard to article 10 and the role of the Security Council, she preferred option 1, and could accept a twelve-month period in the interests of consensus. She also supported provisions for preserving evidence. She continued to support the thrust of article 12.

14. **Mr. ROBINSON** (Jamaica) thought that aggression, terrorism and drug trafficking should be listed in article 5. The Preparatory Commission should define them and elaborate their elements. Jurisdiction over the treaty crimes should be under an opt-in regime.

15. In article 5 *ter*, he was concerned about the reference to "civilian populations", which seemed to imply the existence of an armed conflict. Crimes of the kind in question could occur in a context not involving an armed conflict. Nor was he happy with the phrase in the definition in paragraph 2 (a) limiting the concept of an attack directed against a civilian population to acts in furtherance of a State or organizational policy.

16. In order to advance the negotiations, he would support the inclusion of elements of crimes as formulated in article xx, and thought that they should be binding on the Court. A problem would arise, however, if the elements were not adopted before entry into force of the Statute; a State should not be asked to express its consent to be bound by the Statute before the elements of crimes had been elaborated.

17. In article 6, he supported the right of the Security Council, under Chapter VII of the Charter, to refer to the Prosecutor a situation in which a crime appeared to have been committed. On article 7 *bis*, he would have preferred an opt-in procedure for all crimes, but could accept option II, with automatic jurisdiction for genocide and opt-in for the other crimes.

18. It would be useful to include in the Statute a provision similar to the fourth preambular paragraph of the definition of aggression annexed to General Assembly resolution 3314 (XXIX), to the effect that nothing in the Statute should be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations. The Security Council's paramount role under Chapter VII of the Charter and the Court's independence would best be secured by leaving it to the Court to determine its own jurisdiction, adopting option 3 for article 10. Under option 1, the Council could at any stage of its work, under Chapter VII, adopt a resolution requiring the Court to suspend proceedings. Option 2 was worse than option 1, since deferral under option 1 would be for twelve months rather than for an indeterminate period.

19. **Mr. MACKAY** (New Zealand) said that, in article 5 *quater*, option 2 of the *chapeau* offered the best solution. As the Court would only have jurisdiction in those cases where national courts were unable to act, it was unlikely to be dealing with a large number of minor or isolated cases.

20. With regard to section B, he welcomed paragraph (a *ter)*, which would help to resolve a troublesome issue. For clarity and consistency with the text elsewhere, he thought that the words "law of armed conflict" should be replaced by "international humanitarian law".

21. He welcomed the reference in paragraph (o) to "inherently indiscriminate" weapons, although the list of weapons should be expanded. He would support a reference to safe areas, if that commanded general agreement.

22. The fundamental problem raised by article 5 *quater* was the new *chapeau* to section D, which would leave very serious gaps in the Statute. It should either be deleted or tightened up. He also shared the concerns of other delegations about the absence of any reference to weapons in part D.

23. He did not regard article xx as necessary, but would support its inclusion for the sake of consensus. However, he had serious concerns about paragraph 4, because protracted negotiations on the elements of crimes might significantly delay the commencement of the Court's work. The elements should be guidelines rather than binding provisions. Article Y was very useful. He welcomed the reference in article 6 (c) to the role of the Prosecutor. With regard to article 7, he would still prefer universal jurisdiction for genocide, but as there seemed to be a large degree of agreement on the approach taken in option 1 of paragraph 2, he could support that approach for all the core crimes. With regard to article 7 *bis*, he supported automatic jurisdiction over all three core crimes.

24. With regard to article 10, he welcomed the reference to resolutions of the Security Council in both options; that introduced a very positive element of transparency into the process. He preferred option 1.

25. He welcomed article 12, and supported option 1. Any additional safeguards introduced must not weaken the power of the Prosecutor to act *proprio motu*.

26. **Mr. OWADA** (Japan) said that it was of paramount importance that general agreement should be reached on creating an effective international criminal court that would have the blessing of the international community as a whole. To that end, he was willing to be as flexible as possible, within the limits of the basic principles that he regarded as essential.

27. He was definitely in favour of the automatic jurisdiction of the Court in relation to the core crimes. What must be avoided was a system of jurisdiction in which the perpetrator of a core crime escaped prosecution through the loophole of the requirement for ad hoc consent by the State of which the perpetrator was a national. To achieve a satisfactory system, it was necessary to create an objective regime in which international criminal justice could

prevail to punish all genuine criminals, while recognizing that the existing system of international law would still apply for States not party to the Statute. The issue at hand was how to reconcile those two requirements.

28. In conclusion, he suggested that the possibility for fuller utilization of the review process envisaged under article 111 might be usefully explored as a way of dealing with issues unresolved at the present Conference.

29. **Mr. van BOVEN** (Netherlands) said that he was committed to automatic jurisdiction in respect of all three core crimes. Genocide, crimes against humanity and war crimes were all serious crimes. He could not accept an opt-in or opt-out regime as proposed in option II in article 7 *bis*. Likewise, regarding the preconditions for the exercise of jurisdiction, he favoured a uniform regime for all three core crimes. He strongly supported the option requiring one out of the four categories of interested States to have accepted the jurisdiction of the Court.

30. Finally, he favoured the Prosecutor having the power to act *proprio motu*. The safeguards outlined in article 12, especially the role for the Pre-Trial Chamber, were fully adequate. Additional safeguards were not only not needed, but might adversely affect the Prosecutor's independence. On the same issue, while he did not oppose the basic idea behind article 16, it raised many practical issues, including possible lengthy delays. Perhaps article 16 should be revised in the light of the provisions on investigation and prosecution in Part 5 of the Statute and those in Part 9 on international cooperation and judicial assistance.

31. **Mr. YAÑEZ-BARNUEVO** (Spain) said that, with regard to article 5, he well understood why the Bureau considered it preferable at that stage to focus on the core crimes on which, in principle, there was general agreement. Other matters could be included subsequently. A sentence could perhaps be included in the article leaving the way open for subsequent developments.

32. With regard to article 5 *ter*, it would be important, both in that article and in article 5 *quater*, to take account of crimes involving sexual violence. There was no need specifically to cover acts of terrorism.

33. Moving to article 5 *quater*, he noted with appreciation that sections B (a *ter*) and D (b *bis)* now included acts against peacekeeping missions. The present wording was broad enough to cover humanitarian assistance or peacekeeping missions organized in a regional context in accordance with the United Nations Charter.

34. He was concerned that the second sentence of the *chapeau* in section D seemed to restrict the scope of the section excessively. It would be better to speak of conflicts "involving" a State's armed forces and dissident armed forces or other armed groups, so as to cover conflicts between different factions, and the reference to control over a part of a State's territory would excessively restrict the scope of the section.

35. He seriously doubted the need for article xx, especially paragraph 4. Article Y was particularly important to ensure that matters not fully covered by the Statute were understood as remaining within the scope of existing or developing rules of international law. In article 7 *bis*, option I was to be preferred. In article 7, he saw no valid reason for the distinction between genocide and the other core crimes. All three should be subject to the same jurisdictional regime, based on the proposal originally made by the Republic of Korea for alternative jurisdictional links. The complementary acceptance of jurisdiction by States not parties under article 7 *ter* was useful. However, there would need to be safeguards, or States might be tempted to use the advantages of the Court without accepting obligations by ratifying the Statute. The second sentence of article 7 *ter* could be strengthened by requiring the accepting State to cooperate with the Court without any reservation in conformity with the whole Statute, and not just Part 9.

36. In article 10, he favoured a combination of options 1 and 2, but the period of deferral should not exceed twelve months. Article 12 on the role of the Prosecutor should be retained as it stood. However, to address the concerns of some delegations, some differentiation might be made in article 6 between referral of situations to the Court under (a) and (b) and investigations by the Prosecutor under (c).

37. Finally, he had reservations about draft article 16. The existing text would allow a State not party to the Statute to challenge the authority of the Court without having made a declaration under article 7 *ter*. That was quite unacceptable. A non-party must explicitly declare that it accepted the jurisdiction of the Court, at least for the purpose of the case in question; otherwise it would have the advantages without the disadvantages.

38. **Mr. ONKELINX** (Belgium) said that he had always favoured automatic jurisdiction for the Court, as reflected in option I of article 7 *bis*. The opt-in formula could allow States to evade their obligations under the Statute, and seriously undermine the Court's credibility and effectiveness.

39. On the issue of preconditions to the exercise of jurisdiction under article 7, he continued to prefer the principle of universal jurisdiction, but could accept the formula allowing the exercise of the jurisdiction of the Court when one or more of the States concerned had accepted jurisdiction.

40. Under article 12, the power of the Prosecutor to initiate investigations *proprio motu* was essential. The safeguards provided for in article 12 appeared to be sufficient, but he would have no problem with additional safeguards if that would meet the concerns of certain States.

41. **Mr. GADYROV** (Azerbaijan) said that in drafting the Statute a balance had to be struck between the so-called realistic approach and the so-called idealistic approach.

42. He had, in principle, always been in favour of automatic jurisdiction. However, he could accept option II for article 7 *bis* as a compromise. Regarding the preconditions to the exercise of jurisdiction, the approach proposed by the Republic of Korea represented a realistic compromise. Universal jurisdiction was not a realistic approach if the Court's jurisdiction was to be widely recognized.

43. He was disappointed that the crime of aggression and the treaty crimes were not covered in article 5, although he recognized that that reflected current political realities. As a compromise, since there was insufficient time to work out an appropriate definition for such crimes, perhaps they could be added to the list without any definition. There could be a transitional clause stating that, pending a definition thereof, the provisions on crimes of aggression and treaty crimes would not come into force. How they were to be eventually defined—by a preparatory commission or at a review conference—was an issue on which he was quite flexible.

44. On the third issue raised by the Chairman at the previous meeting, concerning suspension of investigation or prosecution by the Security Council, he felt that, since provisions concerning the crime of aggression would not come into force at the same time as the other provisions, option 3 for article 10 could be accepted. Any disputes between the Court and the Security Council could be resolved under existing international law.

45. He was not in favour of the Prosecutor having powers to act *proprio motu*, and favoured deletion of article 12 and of article 6 (c). That would not undermine the independence of the Prosecutor, but would simply underline the principle of complementarity.

46. On the fifth issue, concerning a provision on elements of crimes, a concern was whether such elements should be binding or be guidelines. After careful consideration, and bearing in mind the possible provision for the definition of the crime of aggression and treaty crimes, he saw the merit of including elements of crimes within the Statute. They should have binding force, subject to the provisions of existing international law.

47. **Mr. GÜNEY** (Turkey) supported the view that terrorism and drug trafficking should be under the jurisdiction of the Court. The definition of the elements of crimes could be left to the Preparatory Commission.

48. In the case of war crimes a very high threshold was necessary, because the Court must not concern itself with measures taken to maintain national security. He therefore favoured option 1 for the *chapeau* of article 5 *quater*. In that connection, he preferred the new wording for the *chapeau* of section D but, for the time being, maintained his position that sections C and D should be deleted.

49. Under article xx, elements of crimes should be agreed on before a particular crime came under the jurisdiction of the Court. However, to be constructive, he could support the proposed article provided that the elements of crime to be formulated would serve merely as guidelines.

50. On the preconditions to the exercise of jurisdiction, he would prefer a combination of options 2 and 3 in article 7. Thus exercise of jurisdiction would require the acceptance of jurisdiction with respect to a given crime by the territorial State, the custodial State and the State of which the accused or suspect was a national. With regard to article 7 *bis*, he would have preferred a provision requiring explicit consent of States in respect of all the crimes under the Court's jurisdiction. However, upon reflection and in a spirit of compromise, he could accept option II of article 7 *bis*.

51. On article 8, he wished to point out that the agreement to combine articles 8 and 22 had been based on the understanding that the first sentence would read: "The Court has jurisdiction only in respect of crimes committed after the entry into force of this Statute."

52. He had great difficulties with article 12 on the powers of the Prosecutor to act *proprio motu*. To maintain paragraph 1 as it stood could mean the Prosecutor being overwhelmed by allegations of a political and legal nature, which would not be conducive to his or her effectiveness or credibility. Article 12 should be deleted. He supported article 16.

53. *Mr. P. Kirsch (Canada) took the Chair.*

54. **Mr. RWELAMIRA** (South Africa), speaking on behalf of the member countries of the Southern African Development Community, supported the view that the three core crimes set out in article 5 should be within the jurisdiction of the Court. It would be regrettable for the crime of aggression not to be covered in the Statute. The issue should at least be kept open for consideration by the Preparatory Commission or a review conference at a later stage.

55. He supported automatic and uniform jurisdiction over the crimes of genocide, crimes against humanity and war crimes, and, if possible, aggression. He was concerned about the attempt to create different consent regimes for different crimes, and opposed to the opt-in regime for crimes against humanity and war crimes under option II for article 7 *bis*. Concerning the preconditions for the exercise of jurisdiction, option 1 in paragraph 2 of article 7 was the only acceptable approach. The built-in veto granted to the State of nationality under option 3 had no basis in general international law.

56. He still favoured option 2 for the *chapeau* to article 5 *quater*, concerning war crimes. On weapons, he could accept the present formulation in paragraph (o) subject to the retention of subparagraph (vi), which allowed for the inclusion of other weapons and weapons systems. In that regard, he could not support the proposal that any action under paragraph (o) (vi) should be subject to the normal amendment procedure under article 110, since that would make the process unduly cumbersome.

57. He had similar concerns regarding article xx, in particular paragraphs 3 and 4. Linking the procedure for amending elements of crime in paragraph 3 to that for amending the Statute would make it extremely difficult, by virtue of paragraph 4, for the Court to start its work. He therefore opposed the inclusion of article xx, at least in its present formulation.

58. He supported a strong prosecutor, with the power to act *proprio motu*, as critical to the independence and effectiveness of the Court. Article 12, as presently formulated, contained adequate safeguards. With regard to article 16, he shared the concerns of other delegations about its practical utility.

59. In article 10, he could accept option 1 as contained in article 10, but had serious problems with option 2, which would allow the Security Council to suspend investigations and prosecutions for an unspecified period. Such a provision would neither enhance the work of the Court nor create a harmonious relationship with the Security Council.

60. He was still strongly in favour of the inclusion of both sections C and D. He was concerned, however, that the new *chapeau* in section D not only restricted the scope of application, but also by implication excluded conflicts between organized armed groups.

61. **Mr. MOMTAZ** (Islamic Republic of Iran) said that the crime of aggression should come under the jurisdiction of the Court. The same applied to the use of nuclear weapons. There was no reason to treat different weapons of mass destruction differently. The use of such weapons necessarily violated such principles of international humanitarian law as the obligation to distinguish between civilian and military targets, the principle of proportionality between the means used and the military advantage obtained, and the prohibition of pointless suffering.

62. In article 5 *quater*, he preferred option 1 on the threshold of application. The inclusion of section C was related to the outcome of other pending issues, especially the role of the Security Council and the powers of the Prosecutor.

63. Despite the threshold proposed in its *chapeau*, section B still posed problems because the provisions were taken mainly from Additional Protocol II to the Geneva Conventions, which his country had not yet ratified, rather than reflecting general international law.

64. His position on article xx remained flexible. The idea of formulating elements of crimes for adoption at a later stage was useful.

65. He still had problems with article 6 (c) because to give the Prosecutor the right to initiate an investigation ex officio would be to give the Court supranational jurisdiction.

66. In paragraph 2 of article 7, he favoured option 2. In article 7 *bis*, he favoured option II.

67. With regard to article 10, option 3 would ensure the independence of the Court. In article 12, neither of the two options met his concerns but, in a spirit of compromise, he could accept option 2 providing for additional safeguards to be introduced before the Prosecutor could act.

68. **Mr. PERAZA CHAPEAU** (Cuba) favoured the inclusion of the crime of aggression in the Statute and supported the position of the Non-Aligned Movement concerning its definition. The use of nuclear weapons should be recognized as a war crime in the Statute. He absolutely rejected any subordination of the International Criminal Court to the Security Council, and therefore supported option 3 for article 10.

69. With regard to article 12, the Prosecutor should not be empowered to initiate investigations *proprio motu*.

70. He welcomed the reference in document A/CONF.183/C.1/L.59, under article 5 *ter* on crimes against humanity, to his delegation's proposal for a mention of economic embargoes as acts causing great suffering.

71. **Mr. QUINTANA** (Colombia) expressed support for option I under article 7 *bis*. Secondly, on preconditions for the exercise of jurisdiction, he supported the position that the consent of the territorial State and the custodial State should be required in respect of the three core crimes. Thirdly, on the role of the Prosecutor, he reiterated his support for article 6 (c) and for option 1 under article 12. With regard to the role of the Security Council, he supported option 3 for article 10—i.e. the proposal to have no provision on the matter.

72. **Mr. SADI** (Jordan) would have preferred to maintain the reference to aggression as a crime subject to the jurisdiction of the Court, deferring its definition for a later stage if an acceptable formula could not be found.

73. With regard to paragraph 1 (g) of article 5 *ter*, he understood that the sticking point in the negotiations concerned enforced pregnancy. In his delegation's view, abortion was not the issue; to force a woman to bear the child of a rapist was torture in extreme form, and should be included as a crime against humanity.

74. Following consultations with other delegations, he proposed the following refinement of the definition of enslavement in paragraph 2 (a *ter*): "'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership of a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."

75. In the *chapeau* of article 5 *quater*, he favoured option 2. He welcomed the retention of sections C and D, and, in a spirit of compromise, he could accept the additional language at the end of D. He maintained an open mind on the question of elements of crimes, but would prefer to delete paragraph 4 in article xx.

76. He supported article 6 (c).

77. In article 7, he supported paragraph 1 and option 1 for paragraph 2, but thought that the text should say that the States concerned must either be parties to the Statute or have accepted jurisdiction. In article 7 *bis*, he preferred option I.

78. In article 10, he preferred option 1, although he still failed to understand why the Security Council would need to suspend consideration of a case for such a prolonged period. The Court and the Security Council could enjoy concurrent jurisdiction.

79. He favoured option 1 for article 12.

80. On weapons, he accepted the formulation in the Bureau paper, although he would find it hard to explain to anyone why bullets which expanded or flattened were prohibited while nuclear weapons and laser guns were not.

81. **Mr. PANIN** (Russian Federation) regretted the omission of the crime of aggression, but recognized that it was probably the only way of achieving general agreement on the Statute as a whole.

82. He still preferred option 1 in the *chapeau* of article 5 *quater*. He could not accept the words "inherently indiscriminate" in the *chapeau* to paragraph (o) of section B. Subparagraph (vi) needed further consideration. He still had serious problems with the *chapeau* and the last sentence of section D. In the latter sentence, after the words "shall affect", a reference to State sovereignty should be retained.

83. In article xx, he could support the development of elements of crimes as an integral part of the Statute. As to jurisdiction, he favoured automatic jurisdiction over genocide, and acceptance by States' consent in respect of crimes against humanity and war crimes.

84. Options 1 and 2 in article 7, paragraph 2, could perhaps be combined. On the role of the Security Council, a compromise could be sought on the basis of option 2 of article 10. Concerning article 12, he maintained that the jurisdiction of the Court should be based only on a complaint by a State or a decision by the Security Council. Articles 15, 16, and 18 were acceptable.

85. **Mr. SANGIAMBUT** (Thailand) preferred option 1 in article 5 *quater* relating to war crimes. He still had reservations concerning sections C and D, but proposed, as a compromise, the inclusion of a provision that sections C and D would not apply if there was any foreign interference in the non-international armed conflict. Secondly, in order to balance sections C and D, he would like terrorism to be included. In article 6, exercise of jurisdiction, he accepted (a) and (b), but still had a reservation on (c).

86. In article 7, he supported the preconditions to the exercise of jurisdiction for genocide, and preferred option 1 for paragraph 2. He had reservations on options 2 and 3 because of the mention of the role of the Prosecutor. In article 7 *bis*, he preferred option II.

87. In article 10, he preferred option 2, which would give the Security Council more flexibility, but he could also accept option 1. He still had a reservation about the role of the Prosecutor in article 12.

88. **Mr. VERGNE SABOIA** (Brazil) said that the changes to the provisions of the Statute proposed in document A/CONF.183/C.1/L.59 enabled him to accept automatic jurisdiction for the three core crimes. He therefore favoured option I in article 7 *bis*.

89. With regard to the preconditions for the exercise of jurisdiction, he preferred the formula in option 1 for paragraph 2 in respect of all three core crimes.

90. With regard to the triggering mechanisms, he accepted article 6, including the power of the Prosecutor to act *proprio motu*. He also accepted article 12; any additional safeguards introduced must not unduly affect the independence of the Prosecutor. Some of the provisions of article 16 might meet concerns about possible abuse of power by the Prosecutor.

91. Option 1 in article 10 took care of the need both to preserve the independence of the Court and not to affect the provisions of the Charter on the role of the Security Council. Provision could perhaps be made for the preservation of evidence.

92. The issue of elements of crime should not delay the commencement of the Court's work. Article xx should provide for additional guidelines rather than binding elements. He very much supported the preservation of article Y.

93. He supported the inclusion of the three core crimes. He regretted that aggression could not be included for lack of a definition, but the matter could be dealt with in the context of a further review. With regard to article 5 *quater*, he supported option 2 for the *chapeau*. He welcomed the provision relating to attacks against United Nations personnel in section B, paragraph (a *ter*). With regard to weapons, he looked forward to a compromise that could preserve the idea of incorporating the existing weapons prohibited under international law, while providing for the subsequent addition of further categories of weapons.

94. **Mr. FADL** (Sudan) supported the view that the crime of aggression should be included. Concerning the new *chapeaux* to sections C and D on war crimes, he supported the statement made by the representative of Austria at the previous meeting on behalf of the European Union, and thought that there should be a reference to conflicts among armed groups.

95. In article 6, and again in article 11, a State party referring a case should be an interested party. He supported option 2 in article 7, with the addition of a mention of the State of nationality of the accused. He was flexible on the reference to the custodial State. In article 7 *bis* he supported option I.

96. On article 10, a request by the Security Council for deferral should be renewable only once, if at all, and for a maximum of half of the initial period.

97. **Ms. WYROZUMSKA** (Poland) said that article 7 *ter* raised a problem in that it allowed for *ex post facto* acceptance of the jurisdiction of the Court by a State not a party, in violation of the *nullum crimen sine lege* principle. She could support a provision allowing a non-party to accept the jurisdiction of the Court in advance, in relation to a particular category of crime under the Statute, but she was against allowing a non-party to accept jurisdiction in respect of a crime which had already been committed.

98. She shared some of the concerns expressed by other delegations. She strongly supported the inclusion of the crime of aggression in the Statute, and regretted that a generally acceptable definition had not been found. The interest in its inclusion should be mentioned either in the Final Act or in a resolution attached to it.

99. With regard to article 7 *bis*, the Court should have automatic jurisdiction over all three core crimes. She did not accept the rationale behind the differentiation between the three core crimes in relation to the exercise of jurisdiction. The regime should be uniform. She strongly supported the option originally proposed by the Republic of Korea.

100. The new version of article 10 was an improvement, and she favoured option 1.

101. She doubted the need for article 16.

102. **Mr. SKILLEN** (Australia) supported automatic jurisdiction for the crimes listed in articles 5 *bis*, 5 *ter* and 5 *quater*, as reflected in option I of article 7 *bis*. A coherent jurisdictional regime was essential to the effective operation of the Court.

103. On the preconditions for the exercise of jurisdiction, he supported a jurisdictional regime which made no distinction among the crimes. In regard to the Security Council, he continued to support option 1 under article 10. A period of time during which the Security Council's suspension would remain operative must be specified.

104. Regarding the power of the Prosecutor to act *proprio motu*, he supported option 1 for article 12, which contained adequate safeguards.

105. He could support the formulation of elements of crimes, but that must not in any circumstances delay the entry into force of the Statute. Paragraph 4 of article xx should be deleted, because there was no justification for preventing the Prosecutor from commencing an investigation in the absence of the adoption of the elements.

106. In regard to the threshold provision at the beginning of article 5 *quater*, he thought that the reference in the *chapeau* of article 5 itself to "the most serious crimes" should meet the concerns of delegations, and allow agreement on option 2 for the *chapeau* of article 5 *quater*.

107. He was opposed to the additional language in the *chapeau* of section D of article 5 *quater*. It would not cover conflicts between two or more dissident groups or those in which the dissident group failed to meet the criteria of responsible command or territorial control.

108. He did not understand the deletion of the provision on prohibited weapons in section D. It was illogical to prohibit the use of certain weapons in international armed conflict but remain silent as to their use in internal conflicts. He would favour the reintroduction of what had originally been paragraph (l) of section D.

109. **Mr. GONZALEZ GALVEZ** (Mexico) said that, from the outset, he had urged the inclusion of the crime of aggression. Informal consultations suggested that the issue might be taken up in the form of a draft resolution to be adopted by the Conference, asking the Preparatory Commission to give it priority consideration. He unreservedly supported the inclusion of gender-related and sexual crimes.

110. Another issue that he considered fundamental was preserving the option of making reservations to the Statute.

111. On article 5 *quater*, he was not in favour of including either of the two options for a threshold but would prefer option 2. He was concerned that nuclear weapons were no longer included in section B, paragraph (o), but merely left as a possible option for the future under a regime for amending the Statute.

112. The *chapeau* to section D needed to be simplified. He also had reservations about article xx, since many delegations would delay signing the Statute until the process of adoption of the elements had been completed.

113. In article 6 (b), and in other similar provisions, he suggested using the phrase "relevant principal organs of the United Nations" instead of the reference to the Security Council. In article 7, he was in favour of option 1 for paragraph 2, but there was a problem regarding subparagraph (b), which could be solved by the addition of the words "as long as the detention was in accordance with international law". He accepted automatic jurisdiction regarding the three core crimes. In article 8, the introductory sentence should provide that the Court had jurisdiction only in respect of crimes committed after the entry into force of the Statute. On article 15, he said that "partial" in

paragraph 3 should be replaced by "substantial". Lastly, article 16, paragraph 2, should be redrafted in more positive terms.

114. **Mr. HAFNER** (Austria) said that Iceland, Hungary, Norway, Estonia, Poland, Slovenia, Croatia and the Czech Republic wished to associate themselves with the statement that he had made at the previous meeting on behalf of the European Union.

115. Speaking on behalf of Austria, he shared the concern that the list of crimes in section B of article 5 *quater* had been reduced. In section B, paragraph (a *ter)*, and in section D, paragraph (b *bis*), he assumed that the terms "civilians" and "civilian objects" included personnel engaged in peacekeeping and humanitarian assistance as well as the materials used by them.

116. Concerning article 7 *bis*, he was firmly in favour of automatic jurisdiction, as reflected in option I, and he supported a uniform approach for all crimes as far as the exercise of jurisdiction was concerned. He continued to favour the proposal originally submitted by the Republic of Korea in that regard.

The meeting rose at 6.00 p.m.

In the absence of Mr. P. Kirsch (Canada), Mr. Ivan (Romania), Vice-Chairman, took the Chair.

The meeting was called to order at 6.05 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.59 and Corr.1)

Part 2 of the draft Statute (continued)

Proposal prepared by the Bureau (continued)

1. **Mr. EL MASRY** (Egypt) noted with regret the proposal made in document A/CONF.183/C.1/L.59 that, if no generally accepted provisions were developed that day, the crime of aggression should not be included in the Statute. The group of countries belonging to the Non-Aligned Movement had decided to continue the quest for a simplified definition of aggression, referring to armed aggression against the political independence or territorial integrity of States, occupation of territories or annexation, which might enable the Conference to come up with a text acceptable to all.

2. With respect to article 5 *quater*, his delegation believed that the Statute should deal only with those crimes deemed to be war crimes by customary international law. Egypt was reluctant to accept any threshold for war crimes in accordance with the Geneva Conventions and their Protocols, but was prepared to accept option 2 as a compromise.

3. With regard to paragraph (o) of section B, he was disappointed to note that the Bureau proposal offered only one option, which was supported by the nuclear States but which was totally unacceptable to his delegation because it made no reference to nuclear weapons. If the Court was to be an international, rather than a European body, a text acceptable to all must be found.

4. As for internal conflicts, section D was unacceptable, as its contents were not yet recognized as customary international law. Paragraph (f) of section D, which related to children, should be relocated in section C, and the remainder of section D deleted. Article xx, on elements of crimes, was too imprecise to serve any useful purpose. Article Y, however, was acceptable as it stood. With regard to article 6, Egypt was one of a number of States that had requested that the General Assembly should be given the right to refer situations to the Court. Article 7, paragraph 1, was acceptable as it stood, and his delegation favoured option 1 in paragraph 2. It favoured option II in article 7 *bis*, and article 7 *ter* was acceptable as it stood.

5. As to the role of the Security Council, Egypt preferred option 3, but would be prepared to review its position if the crime of aggression was included in the Statute and an equal role conferred on the General Assembly, subject, however, to three conditions. First, a time limit—preferably non-renewable, and in any case not indefinitely renewable—must be fixed for any suspension requested by the Security Council; secondly, such request must take the form of a Security Council resolution; thirdly, the Court must have the right to request the Security Council to look into a situation of aggression if the Council had not done so of its own motion.

6. Egypt had serious reservations about conferring *proprio motu* powers on the Prosecutor: to do so might hamper the Prosecutor's effectiveness in practice. As to article 15, the criteria set forth therein were not objective: the only criterion that could be assessed objectively was the total collapse of the national judicial system. As to article 17, challenges to the jurisdiction of the Court should be brought before the Pre-Trial Chamber or the Appeals Chamber. The decision should be unanimous, or else taken by a two-thirds majority.

7. **Mr. MAEMA** (Lesotho) reiterated his delegation's view that the Court should have automatic jurisdiction in respect of all core crimes. Lesotho accepted option 1 of article 7 *bis*. With regard to article 10, the fact that the Security Council was seized of a matter under Chapter VII should not impede or suspend the Prosecutor's powers to investigate or prosecute crimes under the Statute. On article 12, the judicial review mechanism envisaged elsewhere in the Statute provided sufficient safeguards with respect to the Prosecutor's role. Lastly, while his delegation appreciated the need for inclusion of elements of crimes in the Statute, it believed that those elements should serve only as guidelines, and should be without binding effect.

8. **Mr. DABOR** (Sierra Leone) said that his delegation urged that sections C and D should be included in the new article 5 *quater*, but it had reservations, for example, regarding the *chapeau* to section D, which referred to organized armed groups that exercised "control over a part of [a State party's] territory". That wording was very restrictive: in his own country, for example, the rebel forces did not occupy a territory. Thus, as presently drafted, section D would exclude the type of internal conflict presently taking place in Sierra Leone. His delegation therefore proposed that the second sentence of the *chapeau* should be replaced by the text: "It applies to armed conflicts that take place in a territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups."

9. With respect to the jurisdictional modalities, his delegation would prefer the order of articles 7 and 7 *bis* to be inverted, and favoured option 1, namely, automatic jurisdiction over the three core crimes. On article 10, his delegation favoured option 1 and welcomed the new safeguard requiring the Security Council's request to take the form of a resolution. Such requests, however, must not be renewable indefinitely; his delegation therefore proposed that they should cease six months after the first renewal. With regard to article 12, sufficient safeguards already existed and option 2 should be deleted. As for article xx, that provision, too, could be deleted.

10. **Ms. DASKALOPOULOU-LIVADA** (Greece) noted that, despite the fact that an overwhelming majority of participants favoured its inclusion, the crime of aggression was not to be included in the Statute. Her delegation was not convinced that the obstacles to its inclusion were insurmountable. The same was true of the question of the role of the Security Council. Matters should not be allowed to rest there: the Preparatory Commission should be mandated to formulate a definition of aggression and explore the mode of involvement of the Security Council, perhaps in a resolution appended to the Final Act. The outcome of that work could then be submitted to the review conference for consideration and action.

11. On the question of jurisdiction, Greece had consistently expressed its strong preference for automatic jurisdiction over all core crimes, and thus favoured option I for article 7 *bis*. It also favoured option 1 for article 7, paragraph 2. With regard to article 10, it supported option 1, which more accurately reflected the proposal originally submitted by Singapore. It also supported option 1 for article 12, as the inclusion of additional safeguards would impede the effectiveness of the Prosecutor's functions.

12. **Mr. BELLO** (Nigeria) said his delegation was dismayed that the Bureau proposal did not include aggression among the core crimes within the Court's jurisdiction, in spite of the support for its inclusion expressed by more than 90 per cent of speakers. Nigeria strongly supported inclusion of the crime of aggression in the Statute, and the

problem of a definition should be the subject of further discussions in the Committee of the Whole. It was also disappointed that nuclear weapons and anti-personnel mines, methods of warfare that were inherently indiscriminate, were not included in paragraph (o) of section B, and hoped that issue would be reconsidered. Nigeria favoured the inclusion of paragraph (p *bis*), and looked forward to agreement on a definition of crimes of sexual violence.

13. Nigeria also supported article xx, but the elements of crimes should be finalized before signature of the Statute. On article 7, it favoured the uniform approach set forth in the Bureau's previous discussion paper (A/CONF.183/C.1/L.53), as well as option I for article 7 *bis*. For article 10, it supported option 3. It continued strongly to favour the deletion of article 12, and was not convinced that additional safeguards under option 2 would allay fears as to the credibility and independence of the institution of prosecutor. Nigeria also supported articles 15 and 16, but endorsed the comments by the representative of Ghana regarding the drafting of the last sentence of article 16, paragraph 2. Without prejudice to the further discussion on article 17, it strongly supported its inclusion in the Statute.

14. **Mr. POLITI** (Italy) said he had two observations to make concerning the definition of crimes. The first related to paragraph (o) of section B, which reflected option 1 set forth in the earlier discussion paper (A/CONF.183/C.1/L.53). The insertion in the *chapeau* of a reference to weapons inherently indiscriminate in violation of international humanitarian law was very helpful, and subparagraph (vi) offered a potentially promising solution to the problem of weapons not included in the list.

15. Secondly, it was clear that the new *chapeau* of section D and the last paragraph of sections C and D provided for substantial restrictions on the applicability of the Statute to internal conflicts. The acceptability of those new formulations was contingent on the acceptance of the entire package of provisions contained in sections C and D, to which Italy attached the greatest importance. It also endorsed other delegations' concerns about the absence of provisions on prohibited weapons in internal armed conflicts.

16. Italy's position with regard to the difficult issue of jurisdiction had always been very clear: it favoured granting the Prosecutor the power to initiate investigations ex officio, and thus supported article 6, paragraph (c), and option 1 of article 12; it also supported automatic jurisdiction over all three core crimes under general international law with the provision of alternative jurisdictional links indicated in option 1 of article 7, paragraph 2. It was opposed to option 3 for the reasons already given by previous speakers.

17. Italy also supported the suggestion made that the articles on acceptance of jurisdiction and preconditions to the exercise of jurisdiction should be reordered. Such a reordering should also help clarify the differing situations of States parties and non-parties. Finally, he did not believe that additional safeguards were needed with respect to the role of the Prosecutor, but the drafting of article 16 could be reviewed in that connection.

18. **Mr. MANSOUR** (Tunisia) said there was still time to reach agreement concerning the crime of aggression. With regard to article 7, paragraph 2, his delegation believed that the State of nationality of the victim must accept the Court's jurisdiction. Though it was prepared to accept article 8, it considered that paragraph 1 of the original article 8 was a better text, and should be reinstated. As to article 10, the text still required further clarification. Tunisia wished to see the Security Council assigned a role in accordance with international instruments. The new text of article 12 represented an improvement on the previous texts, as it contained a safeguard in the form of the Pre-Trial Chamber. He had reservations about article 15, the provisions of which were not sufficiently clear.

19. **Mr. BIHAMIRIZA** (Burundi) said that his delegation would have liked the crime of aggression to have been defined during the Conference so that it could be included in the Statute. Proposals to include economic embargoes violating international law among crimes against humanity should be considered at a review conference.

20. On article 5 *ter*, his delegation proposed that the word "multiple" should be deleted from paragraph 2 (a), as an individual act might well be a crime against humanity. It supported option 2 in article 5 *quater*, and deplored the exclusion of nuclear weapons and anti-personnel landmines. It saw no need for article xx; the crimes concerned were already adequately defined, and the Court should be left some latitude. On the other hand, his delegation supported the inclusion of article Y.

21. With regard to exercise of jurisdiction and preconditions thereto, the Statute should not differentiate between genocide and the other core crimes; Burundi thus supported option 1 of article 7, paragraph 2, which should be merged with paragraph 1. In article 7 *bis*, it favoured option I. On article 10, it would have liked the suspension period to be shorter, but could accept the provision as worded, provided that the need for preservation of evidence was addressed. Finally, it reaffirmed its support for option 1 in article 12.

22. **Mr. KATUREEBE** (Uganda) said that the Court's jurisdiction should extend to all the core crimes defined in the Statute. The Court must have a strong, independent prosecutor with the power to initiate investigations. The language of option 1 in article 12 was acceptable to his delegation, although he did not rule out additional safeguards.

23. Uganda shared other delegations' concern about the watering down of the Court's jurisdiction over situations of internal conflict. As currently worded, the second sentence of the *chapeau* of section D severely limited the Court's scope in that regard. Whether or not the perpetrators controlled territory was immaterial: they might be operating from a neighbouring country, with or without that country's consent, as was currently the case in Uganda. His delegation thus supported the proposal by the representative of Sierra Leone with regard to the *chapeau* of section D.

24. **Mr. NATHAN** (Israel) said he did not support the view that the threshold for war crimes given in options 1 and 2 of article 5 *quater* was unnecessary because the *chapeau* to article 5 already restricted the Court's jurisdiction to the most serious crimes of concern to the international community as a whole. That *chapeau* dealt with general categories of crimes; it would still be necessary to make clear, under the war crimes heading, that the Court would be concerned only with crimes which were part of a plan or policy or a large-scale commission of such crimes, in line with option 1 in article 5 *quater*.

25. His delegation reserved its position with regard to paragraph (f) of section B, concerning the transfer of a civilian population, and particularly opposed the words "directly or indirectly", which had no basis in customary international law.

26. With regard to paragraph (t) of section B, the insertion of the word "national" before the words "armed forces" did not reflect the object and purpose of the Convention on the Rights of the Child. He noted that the adjective "national" was not used to qualify the words "armed forces" in paragraph (f) of section D, which likewise dealt with conscription of children.

27. Israel favoured the inclusion of a definition of elements of crimes, as provided for in article xx: many of the criminal acts covered by article 5 had been identified some ninety years previously and were in dire need of redefinition. It favoured option II in article 7 *bis*, to give expression to the consensual nature of the Statute and help

secure its widest possible acceptance by the international community. In article 7, it favoured a combination of options 2 and 3, requiring acceptance of jurisdiction by the territorial State, the custodial State and the State of nationality.

28. On article 12, Israel had already expressed concern that conferral of *proprio motu* powers on the Prosecutor might adversely affect his or her independence by exposing him or her to all kinds of constraints and pressures. Either provision should be made for additional safeguards before the Prosecutor could act, or article 12 should be dispensed with. On article 8, while his delegation favoured merging the original articles 8 and 22, it was essential that the article should contain a provision relating to the non-retroactivity of the Court's jurisdiction. With regard to article 10, a balance should be struck between the position of the Security Council as laid down in the Charter and the proper functioning and independence of the Court.

29. **Mr. BAZEL** (Afghanistan) said that most of his delegation's comments with regard to the earlier discussion paper (A/CONF.183/C.1/L.53) were also applicable to the new proposal (A/CONF/183/C.1/L.59). His delegation considered aggression to be the "mother of crimes", and strongly supported the position of the Non-Aligned Movement in that regard. It favoured the definition of aggression proposed in document A/CONF/183/C.1/L.56, paragraph 2 (g) of which reflected the language of article 3 (g) of the definition of aggression annexed to General Assembly resolution 3314 (XXIX). On article 10, his delegation continued to support option 1, provided that: (a) the period of suspension was limited to six months; (b) the period was renewable once only; (c) the gathering of evidence and investigation should continue during that period; and (d) if no decision was taken by the Security Council at the end of the period, the Court could proceed independently. With regard to article 12, his delegation associated itself with the views expressed by the representatives of Turkey and Egypt.

30. **Mr. BOUGUETAIA** (Algeria) said that the Bureau proposal gave his delegation some grounds for hoping that the obstacles to the success of the Conference might still be overcome. Algeria's firm support for the inclusion of the crime of aggression in article 5 scarcely needed reiterating. Despite near-unanimous support for its inclusion, that crime appeared no longer to feature on the Conference's agenda. With sufficient political will, the definitional problem could have been overcome and the crime of aggression included in the Statute.

31. On war crimes, Algeria endorsed the call for the inclusion of nuclear weapons in the list of proscribed weapons in paragraph (o). It continued to oppose inclusion of internal armed conflicts under the Court's jurisdiction, on account of the practical difficulty of distinguishing between true armed conflict and policing operations intended to restore public order. His delegation noted with satisfaction that a provision had been inserted at the end of section D, taking account of the need to defend the territorial integrity of States by all means consistent with international law. It might be willing to accept sections C and D subject to some redrafting.

32. Algeria regarded the explicit consent of the State as fundamental to article 7 *bis*. In the interests of consensus, it could, if necessary, accept option II. On article 10, it favoured option 1, with a few additional safeguards. On article 12, it opposed *proprio motu* powers for the Prosecutor, which would be detrimental to his effectiveness and credibility. Its preferred option was the deletion of article 12; failing that, it would favour option 2, with provision for additional safeguards before the Prosecutor could act. Article 16 might provide an initial safeguard, as well as affirming the principle of complementarity.

33. **Mr. EFFENDI** (Indonesia) said his delegation fully endorsed the position of the Non-Aligned Movement concerning the crime of aggression and nuclear weapons. It continued to favour the deletion of article 6 (c) and of article 12. However, it could consider a package based on option 2 for article 12 and the reformulation of articles 15 and 18, together with the provision for the protection of national security information.

34. Over-politicization had added to the difficulties of the negotiation process. It now appeared that the Court would no longer have jurisdiction only over situations where a national criminal justice system had totally or partially collapsed, but would also have the power to hear and overrule decisions on purely domestic matters, taken by the executive and judicial branches of sovereign States in accordance with their national laws and constitutions. The danger of investigations being initiated for political motives could not be disregarded. While some had argued that the integrity of the Prosecutor and the filtering role of the Pre-Trial Chamber would provide safeguards against such investigations, neither Prosecutor nor judges could be expected to have a full understanding of the situation and internal security problems of each and every developing society. Article 6 (c) and article 12, as well as articles 15 and 18 as currently drafted, eroded the principle of complementarity that was one of the fundamental bases for the Court's jurisdiction.

35. With regard to article 5 *quater*, in a spirit of compromise his delegation was now prepared to accept the inclusion of sections C and D, provided that option 1 was chosen for the *chapeau* and that the provisions were supplemented in the manner proposed by the representative of Thailand. On article 7, it could accept the proposal to combine options 2 and 3. It continued to believe that option II for article 7 *bis* was essential if the goal of universal accession was to be achieved.

36. It might be better to leave the problem posed by article 10 to be resolved by the Assembly of States Parties and the States Members of the United Nations, should a case of conflicting jurisdiction between the Court and the Security Council arise in the future. The integrity of Articles 39 and 103 of the Charter would not be jeopardized if option 3 were chosen. His delegation also strongly supported the inclusion of article 16, which embodied the principle of complementarity.

37. **Ms. LEHTO** (Finland) said her delegation supported what had been proposed by the representative of Austria at the Committee's 33rd meeting concerning the *chapeau* of section D in article 5 *quater*. Alternatively, the second sentence of the *chapeau* could be deleted.

38. Her delegation attached great importance to the inclusion of paragraph (p *bis*) and paragraph (g) of article 5 *ter* in their entirety and was pleased to note that considerable progress had been made towards achieving a widely acceptable definition of crimes of sexual violence. It supported the suggestion that articles 6, 7 and 7 *bis* should be reordered. On article 7 *bis*, it firmly believed that there was no viable alternative to the automatic jurisdiction of the Court over all three core crimes. Especially in the light of articles 15 and 17, retention of option II would amount to a double threshold for the exercise of the Court's jurisdiction. Finland also favoured a unified regime with regard to preconditions along the lines of option 1 in article 7, paragraph 2. To draw a distinction between genocide and other core crimes did not really make sense, as in practice those crimes often overlapped.

39. Article xx would require considerable redrafting so as to make it clear that elements of crimes would not be binding on the Court, and that their completion would not delay its operation. Option 1 of article 10 was acceptable, on condition that the language concerning the need for preservation of evidence was included. On article 12, Finland strongly favoured *proprio motu* powers for the Prosecutor. It continued to think that option 1 already contained sufficient safeguards. Too many procedural obstacles should not be placed in the way of the Court's operations.

40. **Mr. RODRIGUEZ CEDEÑO** (Venezuela) said that the Bureau proposal constituted a sound basis from which to work towards an acceptable text for Part 2. The crime of aggression should be included in the Statute only if sufficiently clearly defined. That matter could best be considered by the Assembly of States Parties, in a procedure that would enable the Court's material jurisdiction to be reviewed without the need for a complete review of the Statute.

41. With regard to war crimes, Venezuela supported option 2 for the *chapeau* of article 5 *quater*, and also inclusion of the use of nuclear weapons in paragraph (o) of section B. It also supported reference to internal armed conflicts: what was important was the nature and seriousness of the crime, rather than the context in which it was committed. It favoured the inclusion of paragraph (c) in article 6, and option 1 for article 12. Article 6 (b) was important, but did not imply that the Court was in any way beholden to the Security Council. Its decision whether to exercise jurisdiction must be taken independently.

42. With regard to article 7, his delegation supported the proposals regarding genocide, and for paragraph 2, although it was flexible, it would prefer option 2. It favoured option II in article 7 *bis*, but would join any consensus that emerged with regard to that article. It supported article 7 *ter* without the last sentence, which was superfluous.

43. On article 10, while the competence of the Security Council in political matters could not be ignored, the Court must enjoy the necessary autonomy in exercising its jurisdiction. A more flexible clause should be inserted calling on the Court to take account of recommendations of the Security Council in exercising jurisdiction. However, his delegation would be prepared to discuss a compromise solution based on option 1. On article 12, it believed that the Prosecutor should have the necessary independence to trigger investigations, in conjunction with the pre-trial procedures and taking into account the legislation of the States concerned. On article 16, notification that there would be a reasonable basis to commence an investigation should be confined to States parties. Article 16 established a series of prerogatives for States not parties without any reference to article 7. It required redrafting.

44. **Mr. PERERA** (Sri Lanka) said there was a need for a high threshold with respect to war crimes, as not all crimes committed in time of war amounted to grave breaches of the rules of war. His delegation therefore supported option 1 in article 5 *quater*. On internal conflicts, section D continued to pose problems when applied to situations in States with functioning legal systems and institutions, as there would be a conflict with the principle of complementarity. In a spirit of compromise, however, his delegation was prepared to consider accepting the provision contained in paragraph (f) of section D, on the clear understanding that an opt-in regime would be adopted in respect of war crimes.

45. To exclude terrorism and drug trafficking from the scope of the Statute would constitute a grave omission. The distinction between core crimes and treaty crimes was an artificial one: the infliction of indiscriminate violence on innocent civilians was legally unacceptable and morally reprehensible in times of war and peace alike. However, although his delegation strongly favoured inclusion of those crimes in the Statute, it would be willing to support the compromise proposal for a nominal enumeration of those crimes, leaving the elaboration of elements to the Preparatory Commission, pursuant to article xx, paragraph 2. The same approach should be adopted with respect to the crime of aggression, the absence of which from the Statute would be a serious lacuna.

46. On the question of prohibited weapons in article 5 *quater*, section B, paragraph (o), subparagraph (vi) contained the elements of a compromise. However, he strongly advocated the inclusion of nuclear weapons in the list of prohibited weapons. His delegation favoured a cumulative approach to the question of preconditions to the exercise of jurisdiction, requiring acceptance of jurisdiction by the territorial and custodial States. In article 7 *bis*, on acceptance of jurisdiction, it supported option II, as the legal clarity that existed under the Genocide Convention did not extend to other crimes. On the role of the Security Council, option 1 provided a basis for compromise. On the *proprio motu* powers of the Prosecutor, there was no justification in international law for the powers envisaged under article 12, which seriously threatened the principle of complementarity.

47. **Mr. MANONGI** (United Republic of Tanzania) said his delegation shared the concern expressed that the necessary political will to secure inclusion of the crime of aggression in the Statute was lacking. His delegation had

consistently supported automatic jurisdiction over all three core crimes, as provided for in option 1 of article 7 *bis*. However, while it had become resigned to option 2, it reiterated its strong concerns about the inherent weakening of the Court implied by that approach.

48. On the role of the Security Council, his delegation would have preferred the "no such provision" option, as the Court should not only be independent but also seen to be independent. In the interests of progress, however, his delegation was willing to support option 1. Article 12 had prompted strong reservations, which might be allayed by the adoption of additional safeguards. Article 16 could be seen as offering such safeguards, and his delegation hoped that those with reservations regarding the *proprio motu* powers of the Prosecutor would reconsider them.

49. His delegation failed to see how elements of a crime could not be considered an integral part of the definition thereof. If article xx was adopted, the elements should be binding. Lastly, on war crimes, his delegation continued to favour option 2 for the *chapeau* to article 5 *quater* and the inclusion of nuclear weapons in paragraph (o) of section B, and was highly concerned at the formulation of the *chapeau* of section D. The new threshold contained therein was too high to allow the Court to play any meaningful role in the situations of non-international armed conflict with which the international community was increasingly faced.

50. **Mr. WENAWESER** (Liechtenstein) said that the Bureau proposal (A/CONF.183/C.1/L.59) offered a very good basis on which to achieve a compromise for Part 2. The question of the inclusion of aggression and treaty crimes was linked with articles 110 and 111, which were of crucial importance for the Statute as a whole and must be drafted so as to accommodate the legitimate concerns of delegations that favoured inclusion of those crimes.

51. On acceptance of jurisdiction, his delegation reiterated its strong preference for option I of article 7 *bis*. Automatic jurisdiction over the three core crimes was crucial for the effective functioning of the Court. The principle of equal treatment of the core crimes also applied to article 7, and his delegation favoured the language contained in its paragraph 1.

52. On article 10 it continued to favour option 1, although it might be possible to bridge the gap between the two options. Discussion should be devoted to the need for preservation of evidence, and to the question of the "specified period of time" referred to in option 2, which his delegation found unacceptable. On article xx, his delegation favoured inclusion of elements of crimes in the Statute, provided that its entry into force was not thereby delayed. It favoured deletion of paragraph 4. On the question of additional safeguards, it continued to believe that article 12 was adequately drafted, taking into account article 16.

53. Agreement seemed to be closer on the thorny issue of war crimes. His delegation was unhappy with some of the changes made in the draft, but was willing to look at the language proposed in a wider context. With respect to section B, paragraph (p *bis*) of article 5 *quater* and paragraph 1 (g) of article 5 *ter*, the time had come to reach an agreement on the inclusion of the crime of forced pregnancy.

54. **Mr. MAHMOOD** (Pakistan) said that his delegation was prepared to consider option II in article 7 *bis*, and supported article 7 *ter*. With regard to war crimes, it was opposed to the Court having jurisdiction over armed conflicts not of an international character, except in a situation where the State structure had collapsed. It would thus prefer to see sections C and D eliminated from the Statute. In a spirit of compromise, his delegation was prepared to consider elements of crimes, provided that they served only as guidelines and did not delay the entry into force of the Statute. Pakistan's position on exercise of jurisdiction was that the State should be the trigger mechanism for initiating the Court's jurisdiction, and it therefore favoured article 6 (a).

55. On the role of the Security Council, his delegation favoured option 3 for article 10. With regard to article 12, it was of the firm view that conferral of *proprio motu* powers on the Prosecutor would contravene the principle of complementarity. Consequently, it was also unable to support any reference in article 16 to the Prosecutor initiating an investigation pursuant to article 6 (c). Furthermore, the investigation by the Prosecutor should be stayed while the Pre-Trial Chamber was considering admissibility.

56. On article 15, paragraph 1 (a), his delegation had difficulty with the words "unwilling or", which violated the principle of complementarity. Those words should therefore be deleted, as should subparagraph (b) of paragraph 1. Paragraph 2 was unacceptable, but paragraph 3 could be retained, as it elaborated on the term "unable genuinely" contained in paragraph 1 (a).

57. **Mr. AL-BAKER** (Qatar) said that the crime of aggression should fall within the Court's jurisdiction, and that agreement should be reached on a definition. Qatar could not accept the jurisdiction of the Court over internal conflicts, except in cases of total collapse of a State's judicial system, and wished to reaffirm the principle of complementarity between national systems and the Court. It also favoured the independence of the Prosecutor, who should not, however, be given total latitude with regard to *proprio motu* triggering.

58. **Mr. MAGALLONA** (Philippines) endorsed the position of the Non-Aligned Movement concerning inclusion of the crime of aggression in the Statute. The review conference must give the highest priority to resolving that outstanding concern. On the role of the Security Council, his delegation proposed that article 10 should read: "In the event that the Court is requested by the Security Council, acting by resolution adopted under Chapter VII of the Charter of the United Nations, not to commence or to suspend its investigation or prosecution of a situation for a period of 12 months from receipt of such request by the Court, the Court may refrain or suspend such activity for such period of time." The provision allowing renewal of the request should be deleted.

59. On war crimes, his delegation preferred option 2. Paragraph (g) of section B should include a reference to "ancestral homes" to take account of the interests of indigenous communities. Paragraph (o) of section B should include a reference to nuclear weapons. Article xx should be deleted, as it would create problems of interpretation of the crimes defined in article 5. If elements of crimes were intended to serve only as guidelines, then they had no place in an instrument embodying the legal rights and duties of States. If, on the other hand, they were essential to understanding the legal nature of crimes, they must form part of the definition of crimes and could not be entrusted to the Preparatory Commission or consigned to an annex.

60. **Mr. JURGELEVICIUS** (Lithuania) endorsed the statement made by the representative of Austria on behalf of the European Union. His delegation favoured option I in article 7 *bis*. It also favoured option 1 for article 7, paragraph 2, as the most likely basis for compromise. On the role of the Security Council, Lithuania would accept option 1 for article 10, with the inclusion of a paragraph concerning the need for preservation of evidence. It also favoured *proprio motu* powers for the Prosecutor, and believed that no safeguards were needed other than those provided for in the proposed text for article 12. Its position with regard to elements of crimes was that they should have no binding effect. Lastly, it strongly favoured inclusion of the crime of aggression in the Statute and hoped that, if efforts to agree on a definition failed, it would be included under the appropriate amendment procedure in the near future.

61. **Mr. NEGA** (Ethiopia) said his delegation regretted the fact that, although inclusion of the crime of aggression was favoured by the overwhelming majority of States, the wish of the majority had been disregarded. Treaty crimes should also be included in the Statute, and their definition entrusted to the Preparatory Commission. Ethiopia reiterated its support for article 6, paragraph (a); paragraph (b) should be clarified through a specific reference to

the relevant crime or crimes, and the Security Council's power of referral should be confined to acts of aggression. As it stood, paragraph (b) would transform the Court into a subsidiary organ of the Security Council. Paragraph (c) was unacceptable to his delegation, as was the current wording of article 12, to which paragraph (c) was closely related.

62. Ethiopia favoured an opt-in approach, but it was prepared to consider option II for article 7 *bis*. It supported option 1 for article 7, paragraph 2, subject to the deletion of the reference to article 6, paragraph (c). On the threshold for war crimes in article 5 *quater*, it was now willing to accept option 2. On weapons, it was disappointed that option 2 for section B, paragraph (o), of the provisions on war crimes in document A/CONF.183/C.1/L.53, which had commanded overwhelming support, had been discarded, but could accept the new paragraph (o) subject to inclusion therein of nuclear weapons and anti-personnel landmines.

63. Ethiopia's position concerning article 10 remained unchanged. Article 12 was unacceptable as currently worded: conferral of *proprio motu* powers on the Prosecutor would be detrimental to the independence, universality and effectiveness of the Court. Article 18 set forth the important principle of *ne bis in idem*, but the exceptions provided for in subparagraphs (a) and (b) of its paragraph 3 required careful consideration. Subparagraph (b) might lead to undue interference in internal judicial matters, and should be deleted.

64. **Mr. AL ADHAMI** (Iraq) said that the Bureau proposal did not reflect the views expressed in the Conference, particularly by countries of the Non-Aligned Movement. Iraq favoured inclusion of the crime of aggression in the Statute, and adoption of the definition of aggression annexed to General Assembly resolution 3314 (XXIX). Economic embargoes should be added to the list of crimes against humanity. With regard to war crimes, nuclear weapons should be included in the list in paragraph (o). Internal armed conflicts not of an international nature should not fall within the jurisdiction of the Court. On exercise of jurisdiction, situations should be referred to the Prosecutor only by a State party, and paragraphs (b) and (c) of article 6 should therefore be deleted. On article 7 *bis*, Iraq favoured automatic jurisdiction over all three core crimes. For article 10, it favoured option 3, as the best guarantee of the Court's independence. It opposed conferral of *proprio motu* powers on the Prosecutor; an investigation should be initiated by the State party directly affected.

65. Article 15 must be drafted so as to make it consistent with the principle of complementarity between the Court and national jurisdictions. The words "unless the State is unwilling or unable genuinely to carry out the investigation or prosecution" should be deleted from subparagraph (a) of paragraph 1, the words "unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute" from subparagraph (b) and the words "and a trial by the Court is not permitted under paragraph 3 of article 18" from subparagraph (c). Paragraphs 2 and 3 should be deleted *in toto*. Article 16 was acceptable. Paragraph 3 of article 18 should be deleted, to take account of the principle of complementarity.

66. **Mr. KESSEL** (Canada) said that Canada was committed to automatic jurisdiction for the three core crimes, as proposed in option I of article 7 *bis*. On article 7, it supported paragraph 1 on genocide and option 1 for paragraph 2. In article 12, option 1 was its preferred choice: the necessary checks and balances were already in the text. On article 10, Canada recognized that in order to maintain international peace and security the Security Council might need to request the suspension of investigations or prosecution by the Court. Option 1 provided a good basis for compromise.

67. As for sections C and D of article 5 *quater*, it was essential that non-international armed conflict should be included in the Statute. The new *chapeau* for section D might have set too high a threshold, and should be reviewed. As for elements of crimes, the language of article xx needed considerable revision. His delegation was concerned

at the suggestion that the elements should be binding and must be adopted before the Prosecutor commenced an investigation. Furthermore, the paragraph might be better located in the resolution on the work of the Preparatory Commission. Lastly, Canada fully supported article 15 as currently drafted.

68. **Mr. SKIBSTED** (Denmark) said his delegation shared the misgivings expressed concerning the threshold in relation to war crimes committed in internal armed conflicts, which was too high and unduly restrictive. It also regretted that section D of article 5 *quater* contained no provision on prohibited weapons corresponding to the one in paragraph (o) of section B.

69. Denmark supported option 1 for paragraph 12, and would be opposed to additional safeguards before the Prosecutor could act. It endorsed the views expressed at the 33rd meeting by the representative of Germany concerning the crime of aggression and article xx, and would prefer to see paragraph 4 of article xx deleted or at least redrafted. Denmark firmly believed that the Court should have automatic jurisdiction over all three core crimes, and thus saw option I in article 7 *bis* as of crucial importance. As to article 7, it was vital that the Court should have a uniform jurisdictional regime for all core crimes, and Denmark would favour the redrafting of paragraph 1 of article 7 to make it applicable also to crimes against humanity and war crimes.

70. **Mr. DAUTO JEICHANDE** (Mozambique) said that, despite events in Rwanda and the former Yugoslavia, the belief apparently persisted that it was more important to refine definitions than to treat aggression as a crime. With sufficient political will, questions concerning the definition of crimes or the role of the Security Council could be solved. While the proposal submitted by the Non-Aligned Movement was not perfect, it could serve as the basis for a definition of aggression that could be supported by all participants, subject to further clarification.

71. On war crimes, Mozambique accepted option 2 for the *chapeau* of article 5 *quater*, but believed that the article should include a reference to nuclear weapons and anti-personnel mines. Article 6 was acceptable. Mozambique believed that preconditions to the exercise of jurisdiction should be the same for all core crimes, and supported option 1 for article 7, paragraph 2. It also supported option I in article 7 *bis*. In article 10 it preferred option 3, but could accept option 1 on the understanding that the request of the Security Council could be renewed for no longer than six months, and once only. His delegation favoured conferral of *proprio motu* powers on the Prosecutor, and thus supported option 1 for article 12, which already contained the necessary safeguards. Lastly, article 20 should set out a clear hierarchy of applicable law. However, case law must not be taken as a binding source of applicable law, but only as a source of interpretation.

72. **Mr. CASTELLAR DUARTE** (Nicaragua) said that, with regard to acceptance of jurisdiction, his delegation preferred option I in article 7 *bis*, for the reasons adduced by the representative of Germany. It also favoured option 1 in article 7. It preferred option 1 in article 10, and also option 1 in article 12. Nicaragua accepted article 5, but wished to see the treaty crimes included in the Statute at a later stage, at a review conference or by means of a protocol. The crime of aggression should also be included in the not-too-distant future, and a resolution to that effect might be adopted. With regard to article 5 *quater*, Nicaragua favoured option 2, and regretted the deletion of the reference to nuclear weapons, and to anti-personnel landmines, which continued to cause loss of life and limb in his country. Lastly, Nicaragua favoured retention of paragraph 4 in article xx, as proceedings could not be initiated without proper prior definition of the crime.

73. **Mr. DA COSTA LOBO** (Portugal) said that the proposed new text for section D of article 5 *quater*, on internal armed conflicts, would have the merit of covering situations in which the most serious crimes took place, and would also bring the Statute closer to existing international humanitarian law. With regard to the jurisdiction of the Court, although it subscribed to the principle of universal jurisdiction, Portugal was willing, in a spirit of

compromise, to accept option I of article 7 *bis* and option 1 of article 7, paragraph 2. It also believed that the core crimes should be given uniform treatment.

74. With regard to the powers of the Prosecutor, option 1 of article 12 struck an appropriate balance. Article 16, however, still posed problems, particularly with regard to the status of States not parties, which would enjoy prerogatives without assuming the concomitant obligations. Portugal also had reservations concerning paragraph 4 of article xx, and endorsed the comments made by the representative of Austria concerning the role of the Security Council.

75. **Mr. PRANDLER** (Hungary) said that the Bureau proposal required his delegation to make a number of painful concessions, which it was willing to make in a spirit of compromise. Hungary favoured automatic jurisdiction for all three core crimes and a unified regime for the preconditions to the exercise of jurisdiction. On the question of weapons, it could accept paragraph (o) in section B of article 5 *quater*, with its important reference to "inherently indiscriminate" weapons. The *chapeau* of section D could be accepted with some revision. Article xx was acceptable as a compromise text, but its application should not delay the entry into force of the Statute. Option 1 in article 10 was acceptable, as were articles 12 and 15. Article 16 was only acceptable as part of a package.

76. **Ms. TALVET** (Estonia) said that conferral of *proprio motu* powers on the Prosecutor was important for the credibility of the Court; her delegation thus supported the inclusion of article 6 (c) and of article 12. It also strongly favoured automatic jurisdiction over all three core crimes, as under option I of article 7 *bis*, and endorsed the reservations expressed by others regarding the *chapeau* to section D of article 5 *quater*. As to preconditions to the exercise of jurisdiction, it favoured a unified regime and supported option 1 in article 7, paragraph 2. Her delegation was uncomfortable with paragraph 4 of article xx, but could accept option 1 in article 10.

77. **Mr. FLORIAN** (Romania) said his delegation supported the statement made by the representative of Austria on behalf of the European Union. Romania favoured automatic jurisdiction of the Court over the three core crimes and option I in article 7 *bis*. On preconditions, it supported article 7, paragraph 1, on genocide, and option 1 for article 7, paragraph 2. It preferred option 1 in article 10, on the role of the Security Council, and considered article 12 a good basis for a compromise concerning the role of the Prosecutor. As to elements of crimes, article xx required substantial redrafting.

78. **Mr. MASUKU** (Swaziland) said his delegation favoured option I in article 7 *bis* and, concerning preconditions to the exercise of jurisdiction, had a strong preference for option 1 in article 7, paragraph 2. Concerning the role of the Security Council, it supported option 1 for article 10. Article 12 was well drafted, and already contained sufficient safeguards. Article xx, however, required further drafting, and elements of crimes should serve as guidelines, with no binding force.

79. **Mr. CLAPHAM** (Solomon Islands) said that his delegation, too, favoured automatic jurisdiction for all three core crimes and option I in article 7 *bis*. On preconditions, it favoured option 1 in article 7, paragraph 2, and opposed option 3, which placed too much emphasis on the State of nationality. On the role of the Security Council, option 1 should be retained for article 10, subject to inclusion of a provision on the preservation of evidence. A combination of options 1 and 2 specifying a definite time period might also provide an acceptable solution. In article 12, option 1 was acceptable, and sufficient safeguards already existed. On article xx, the question of elements should not delay the entry into force of the Statute, and paragraph 4 should be amended or deleted.

80. On the question of war crimes in internal armed conflict, his delegation supported the inclusion of sections C and D in article 5 *quater*. However, the new *chapeau* to section D did not take account of the sort of contemporary

conflict the Court was designed to address. If the *chapeau* was retained, it should be amended to cover armed conflict between armed groups, as suggested by the representative of Sierra Leone.

81. **Ms. O'DONOGHUE** (Ireland) said her delegation was not convinced that article xx was necessary, but would be willing to see a provision on elements of crimes included in the Statute. The elaboration of elements of crimes must not delay its entry into force or the operation of the Court, and elements of crimes should constitute guidelines of a non-binding nature. Consequently, paragraph 4 should be deleted.

82. On jurisdictional matters, the Court should have automatic jurisdiction over the three core crimes, and Ireland thus favoured option I in article 7 *bis*. On preconditions to the exercise of jurisdiction, it believed that option 1 in article 7 should apply to all three crimes. *Proprio motu* powers for the Prosecutor were essential to the effectiveness of the Court, and option 1 in article 12 already contained sufficient safeguards. However, in a spirit of compromise, she could accept additional safeguards, and suggestions made concerning article 16 might be useful in that regard. Lastly, on the role of the Security Council, she could accept option 1 in article 10, but not the "specified period of time" referred to in option 2.

83. **Mr. RUPHIN** (Madagascar) said that the international community must not remain indifferent to the plight of defenceless countries, or allow aggressors to act with impunity. The crime of aggression should be included among the crimes over which the Court had jurisdiction. As for the treaty crimes, if it proved impossible to give them proper consideration at the Conference, they should be considered at a review conference to be held in the not-too-distant future. With regard to acceptance of jurisdiction, he favoured automatic jurisdiction over the most serious crimes, as under option I of article 7 *bis*. On article 8, he favoured non-retroactivity.

84. **Mr. SKELEMANI** (Botswana) said he looked forward to seeing the final text of the provisions on crimes of sexual violence, provisions to which he attached great importance. In article 5 *quater*, he favoured option 2, and deplored the exclusion of nuclear weapons and landmines from the list of prohibited weapons. Sections C and D were acceptable, although the latter, in particular, might be further improved. With regard to article xx, elements of crimes were acceptable if they took the form of guidelines, but they would need to be negotiated before signature of the Statute.

85. He was at a loss to understand the difficulties regarding definition of the crime of aggression. As to the acceptance of jurisdiction, he favoured automatic jurisdiction over all core crimes. On the role of the Security Council, the question of the period of time for which the Council could request a suspension needed further negotiation. In principle, however, options 1 and 2 in article 10 were acceptable. Option 1 for article 12 was also acceptable, particularly when the article was read in conjunction with article 16.

The meeting rose at 9 p.m.

The meeting was called to order at 9 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.59)

Part 2 of the draft Statute (continued)

Proposal prepared by the Bureau (continued)

1. **Mr. FIFE** (Norway) said that automatic jurisdiction and a uniform jurisdictional regime for the three core crimes were essential for the credibility of the Court. His delegation was still not persuaded that the crime of aggression or any of the treaty crimes could be inserted at the present stage, but thought they could be addressed in some other manner at a later stage.

2. On war crimes (article 5 *quater*), his delegation favoured the threshold in option 2. It could support the listing of weapons in section B, paragraph (o), but was not yet persuaded that the drafting of paragraph (o), subparagraph (vi), was suitable. Regarding armed conflicts not of an international character, Norway still wished to see the inclusion of both section C and section D. In restricting the application of section D to conflicts between armed forces and dissident armed forces, the new *chapeau* unduly limited the scope of well-established norms of international law.

3. Norway could basically support the inclusion of article xx on elements of crimes, but was not persuaded that the wording proposed was useful. It should be made absolutely clear that the elements to be considered would be guidelines of a non-binding nature. In paragraph 4, the word "shall" needed to be replaced by the word "should", so as to avoid the possibility of an interpretation that would allow a single State to veto the initiation of an investigation.

4. With regard to article 6 on exercise of jurisdiction, his delegation had difficulty in accepting that a distinction should be drawn between genocide and other crimes against humanity. On preconditions to the exercise of jurisdiction, Norway favoured option 1 for paragraph 2. It agreed that option 3 would actually be an incentive for States not to ratify the Statute, as it would effectively give non-States parties the right to veto the possibility of prosecuting their nationals. Norway thus favoured option 1 for article 7 *bis* on acceptance of jurisdiction and could support the proposal in article 7 *ter*.

5. On the role of the Security Council, his delegation definitely favoured option 1 for article 10 and did not see how a waiting period of twelve months could be at variance with Article 103 of the Charter. Norway had no objection to article 11. As for article 12, it strongly favoured option 1, conferring *proprio motu* powers on the Prosecutor. The existing safeguards were basically satisfactory, although article 16 also contained safeguard provisions that might be worth exploring.

6. **Ms. SHAHEN** (Libyan Arab Jamahiriya) said the proposal before the Committee took into account only one point of view and did not represent a balanced approach. The crime of aggression must be included in the Statute. Economic embargoes should be included in article 5 *ter* as a crime against humanity. The exclusion of nuclear weapons from section B, paragraph (o), of article 5 *quater* was a grave omission. Her delegation opposed the inclusion of sections C and D on armed conflicts not of an international character, although, if section C had been

amended to indicate that its provisions were without prejudice to the sovereignty of States, her country might have been able to accept it.

7. Concerning preconditions to the exercise of jurisdiction, she said that jurisdiction must be uniform and preferably of the opt-in type, which was not reflected in the Bureau's proposal. The power vested in the Prosecutor should be restricted. He or she hould be able to commence an investigation on the basis of information obtained from a State, but not on the basis of information from non-governmental organizations, victims or their representatives.

8. With regard to article 10, her delegation could not agree to any role for the Security Council. The Court would be paralysed if the Security Council could impede its investigations because of the veto power of individual States. Her delegation therefore favoured the deletion of article 10.

9. **Mr. R. P. DOMINGOS** (Angola) said that, although the Bureau proposal was commendable, his delegation regretted that it did not take into account the definition of aggression proposed in document A/CONF.183/C.1/L.56. Angola also regretted that, in connection with weapons to be prohibited, no reference was made to nuclear weapons and anti-personnel mines. It advocated automatic jurisdiction for the gravest crimes and endorsed the inclusion of paragraph (c) in article 6.

10. On the role of the Security Council, his delegation could support option 1 in article 10 but believed that limits must be set: the Council must not be permitted to suspend the jurisdiction of the Court indefinitely. Angola also supported a strong and independent prosecutor with ex officio powers and therefore favoured option 1 for article 12. That option already provided sufficient safeguards.

11. **Mr. OKOULATSONGO** (Congo) said his delegation was surprised to note that, disregarding the views of the majority, the Bureau had not included the crime of aggression as a core crime within the jurisdiction of the Court, instead setting a deadline for agreement on a definition. Failure to meet that deadline would mean, however, not—as the Bureau apparently hoped—that the interest in addressing that crime would have to be reflected in some other way, but that the crime of aggression would have to be included in the Statute and the question of its definition deferred to some future date.

12. Irrespective of whether or not a conflict was international, it was children, women and the elderly who suffered the most. Efforts must continue to find an acceptable formulation for the provisions protecting those vulnerable sectors of the population, particularly women victims of sexual violence during armed conflicts.

13. The phrase "'Torture' means the intentional infliction of severe pain or suffering ... upon a person in the custody or under the control of the accused", in article 5 *ter*, paragraph 2 (c), was badly formulated, as, at the time when the torture was carried out, the person who inflicted it had not yet been an accused person. The phrase should therefore read: "'Torture' means the intentional infliction by a person of severe pain or suffering ... upon another person under his or her custody or control". The phrase "pursuant to or in furtherance of a State or organizational policy to commit such attack", in article 5 *ter*, paragraph 2 (a), constituted an unacceptable threshold that in no way reflected contemporary realities or international law. Most delegations had supported option 3 in discussion paper A/CONF.183/C.1/L.53. That option was not included in the Bureau proposal, and should be reinstated. Option 2 could be accepted only for lack of anything better.

14. Both options in the *chapeau* of article 5 *quater*, on war crimes, should be deleted, as the words "as a part of a plan or policy or as part of a large-scale commission of such crimes" might result in impunity for those who

committed war crimes. The *chapeau* to that article should consist only of the words "For the purpose of the present Statute, war crimes means:".

15. With regard to preconditions to the exercise of jurisdiction, his delegation was surprised to see that the proposal by Germany in that regard had not been retained. Nevertheless, in a spirit of cooperation, his delegation could accept option 1 for article 7 *bis*, which proposed automatic jurisdiction over the three core crimes.

16. On the role of the Security Council, the period of time during which the Court must suspend an investigation at the request of the Council must not exceed six months and must not be renewable. Protection of witnesses and of evidence must be ensured. The Prosecutor must be able to initiate investigations *proprio motu*, but article 12 established an unacceptable regime. The Pre-Trial Chamber should be entitled to act only after the Prosecutor had done so, and the latter must have very broad powers in order to carry out an effective investigation. His delegation accordingly rejected both option 1 and option 2 for article 12.

17. **Mr. MAQUIEIRA** (Chile) said that acceptance of jurisdiction must be automatic. The options for preconditions to the exercise of jurisdiction set out in the Bureau proposal could form the basis for a solution. There was no major difference between the two options in article 10 on the role of the Security Council. Perhaps a compromise could be found that would make it possible, with the agreement of the Pre-Trial Chamber, to take the necessary measures to safeguard evidence.

18. Additional safeguards for the Prosector could be acceptable provided they were not merely a device for reducing or eliminating the Prosecutor's *proprio motu* capacity by roundabout means. Finally, the provisions on elements of crimes should serve as guidelines without binding effect.

19. **Mr. Sayyid Said Hilal AL-BUSAIDY** (Oman) said his delegation shared the views expressed by the representative of the Islamic Republic of Iran on behalf of the Non-Aligned Movement concerning article 5. Like many other countries of that Movement, Oman was disappointed to see that the crime of aggression had not been included among the core crimes within the jurisdiction of the Court, and supported the inclusion of a clear definition of that crime along the lines proposed by the delegations of the Syrian Arab Republic and Bahrain.

20. Although Oman believed that there should be no threshold for war crimes, it could, in a spirit of compromise, support the threshold in option 2 for the *chapeau* of article 5 *quater*. Nuclear weapons should be included in the list. Internal conflicts should not fall within the jurisdiction of the Court except in the event of total collapse of the judicial system. With regard to preconditions, following the withdrawal of option 3 his delegation had no choice but to accept option 2.

21. In article 7 *bis*, Oman supported option 2, which provided for automatic jurisdiction for genocide and opt-in jurisdiction for crimes against humanity and war crimes. Article 7 *ter* should be retained. On article 10, the Security Council should in no circumstances be allowed to hinder the work of the Court. The duration of the period during which the Court could be requested to suspend its investigation or prosecution must be specified, and that period must be brief and non-renewable.

22. The Prosecutor should have a prominent role, but should not be able to initiate investigations *proprio motu*. However, if he or she were accorded such powers, Oman would support option 2 for article 12.

23. **Mr. DIAZ LA TORRE** (Peru) said there appeared to be a consensus that genocide, crimes against humanity and war crimes should constitute the core crimes; it was to be hoped that consensus could also be reached on

acceptance of automatic jurisdiction over all three core crimes. Options 1 and 2 for article 10 could be combined so that the Court would suspend its activity at the request of the Security Council for a period of twelve months, renewable once, if the accused person was not under detention. If the accused was detained, the suspension should be for six months only, renewable once only.

24. On the role of the Prosecutor, Peru was satisfied with option 1 for article 12, particularly its paragraph 3. It saw no need to include a provision for additional safeguards before the Prosecutor could act. Elements of crimes should be defined before the Statute entered into force. Peru supported article Y as currently drafted. It preferred option 2, covering sections A and B, in article 5 *quater*. The crime of sexual violence should of course be included in both articles 5 *ter* and 5 *quater*. Lastly, Peru also supported the Spanish proposal that the second sentence of article 7 *ter* should be strengthened so as to require the accepting State to cooperate with the Court in accordance with all the provisions of the Statute—not merely with Part 9 thereof.

25. **Mr. AGIUS** (Malta) said that his country was strongly opposed to any opt-in or opt-out possibility with regard to the acceptance of jurisdiction and firmly in favour of automatic jurisdiction over all three core crimes. With regard to preconditions to the exercise of jurisdiction, Malta favoured uniformity for all the core crimes, along the lines of the proposal by the Republic of Korea. It reiterated its support for a prosecutor with *proprio motu* powers. For article 12 it preferred option 1, which contained adequate safeguards. A provision for additional safeguards would be acceptable only as a compromise.

26. Malta preferred option 1 for article 10 on the role of the Security Council: option 2 carried the inherent risk that Security Council deliberations might be protracted indefinitely. With regard to article xx, the end result of the inclusion of that provision would be to render the Statute ineffective for as long as it took to achieve consensus on a formulation. In any event, Malta was against the retention of paragraph 4.

27. The crime of aggression should be included in the Statute, and Malta held out hope for a last-minute consensus on an acceptable definition. Failing that, it would fully support the recommendation made by the representative of Germany in that regard. As for treaty crimes, Malta agreed with the Bureau's recommendation that they should be deferred for future consideration.

28. **Ms. TOMIČ** (Slovenia) said that, on the acceptance of jurisdiction and its exercise, her delegation favoured a uniform approach to all three core crimes, namely, automatic jurisdiction upon ratification of the Statute and the application of the formula proposed by the Republic of Korea for the preconditions. Accordingly, Slovenia favoured article 7, paragraph 1, and option 1 for paragraph 2. It would prefer subparagraph 2 (b) to be reformulated in order to refer to the State on whose territory the accused or suspect was present, rather than to the State that had custody, a wording that could be interpreted too narrowly. Her delegation strongly supported option 1 for article 7 *bis*.

29. As to the *chapeau* of article 5 *quater*, Slovenia favoured option 2 for the general threshold and supported the inclusion of paragraph (a *ter*) in section B. It had already proposed inclusion of a reference to civilians or civilian objects within United Nations safe areas, but despite considerable support, that wording had not been reflected in the Bureau's proposal. In view of the late stage of negotiations, her delegation would not insist on its proposal, but wished to place on record its understanding of Section B, paragraph (a), concerning attacks against civilian populations, as also providing protection to civilians in safe areas.

30. Slovenia had noted with concern the heightened threshold in section D, the shortened list of crimes, and especially the deletion of the weapons provision. It endorsed the amendment proposed by the delegation of

Sierra Leone for the *chapeau* of section D. It firmly supported inclusion of crimes of sexual violence in their various manifestations, including enforced pregnancies, both under war crimes and under crimes against humanity.

31. On article xx, Slovenia favoured the deletion of paragraph 4, as adoption of elements of crimes should not delay the Statute's entry into force and the future Court's functioning. Elements of crimes should serve as guidelines of a non-binding nature. Slovenia could support option 1 for article 10 on the role of the Security Council, with a precisely defined time-frame of twelve months, and would favour the inclusion of additional language concerning the preservation of evidence. Finally, her delegation reiterated its support for conferring *proprio motu* powers on the Prosecutor and its belief that the safeguards already set out in article 12 were sufficient.

32. **Mr. PATEL** (Zimbabwe) said his delegation endorsed the view that aggression was an international crime *par excellence* and that it should be included in article 5. Regarding article 5 *quater*, option 2 was clearly preferable, as it allowed for the widest possible jurisdiction over war crimes. The concern that inclusion of minor breaches might undermine the Court's effectiveness was covered by the reference in article 15, paragraph 1 (d), to cases not of sufficient gravity to justify further action by the Court.

33. On section B, paragraph (o), and the listing of weapons, Zimbabwe would prefer to include nuclear weapons and landmines, because they were inherently indiscriminate. If that was not possible, the entire list could be deleted and only a general reference to weapons which were disproportionate or indiscriminate in their effects included. Failing all else, paragraph (o) could be accepted in the light of the provisions of its subparagraph (vi). The lower threshold for sections C and D was to be preferred, and consistency between the two *chapeau* should be ensured.

34. With regard to article 7, paragraph 2, his delegation favoured option 1 in paragraph 2, as being consistent with the principle of universal jurisdiction. For article 7 *bis*, his delegation likewise supported option 1, providing for automatic jurisdiction over all three core crimes. Article 10 on the role of the Security Council would be appropriate only if the crime of aggression were included in the Statute. Otherwise, the article should be deleted.

35. Article xx was unclear in object and content, and should be deleted. If it was retained, its paragraph 4 should certainly not be allowed to stand.

36. **Mr. MORSHED** (Bangladesh) said his delegation wished to join those of Botswana and Jordan in expressing the strong hope that adequate language would be found to cover crimes of sexual violence in paragraph (p *bis*) of article 5 *quater*, section B. Bangladesh preferred option 2 on the powers of the Prosecutor: the Pre-Trial Chamber should consist of five judges with mandatory review powers, and a unanimous, affirmative vote of all five members should be necessary before the Prosecutor could act.

37. **Mr. RHENAN SEGURA CARMONA** (Costa Rica) said there should be automatic jurisdiction over all three core crimes. Costa Rica supported option 2 for the *chapeau* to article 5 *quater* and was satisfied with the wording of paragraph (b *bis*) in section D. It hoped that a definition would soon be found for crimes of sexual violence. Nuclear weapons should be included in paragraph (o) of section B. Armed conflicts not of an international character should be covered by the Statute, and section D of article 5 *quater* should be strengthened so as to cover conflicts between different armed groups or involving armed groups that did not control territory. Paragraph 4 of article xx, on elements of crimes, posed serious problems. His delegation supported article Y and the inclusion of paragraph (c) in article 6. Paragraph 1 of article 7 and option 1 for paragraph 2 should be merged so as to produce a single text. His delegation supported option 1 for article 10 on the role of the Security Council and option 1 for article 12 on the Prosecutor.

38. **Mr. GONZALEZ DAZA** (Bolivia) said his delegation regretted the fact that the crimes of aggression, drug trafficking and terrorism, which were new threats to international and internal peace and security, had not been included in the Statute. The suggestion that they should be dealt with later at a special conference left his delegation fearful that extension of the Court's jurisdiction to cover such crimes might be postponed indefinitely. On article 6, Bolivia endorsed Mexico's view that not only the Security Council but also the General Assembly should be able to refer situations to the Prosecutor. On article 7 *bis*, Bolivia supported automatic jurisdiction over all core crimes. Lastly, it favoured deletion of article 10, as options 1 and 2 would limit the autonomy of the Court and make it dependent upon the political decisions of the Security Council.

39. **Mr. MINOVES TRIQUELL** (Andorra) said that his delegation would have been able to support inclusion of the crime of aggression, but that since the definition of that crime posed problems, it might be best to defer consideration of the matter and to try to make progress on other subjects. Andorra supported option 2 for the *chapeau* of article 5 *quater* on war crimes and favoured the inclusion of sections C and D. On the exercise of jurisdiction, it endorsed article 6 and option 1 for article 12. The role of the Security Council was properly covered in option 1 for article 10, and the Belgian proposal on the need for preservation of evidence was of interest. While, in a spirit of compromise, his delegation could agree to the inclusion of article 16, it believed that article should be simplified.

40. **Mr. ZAPPALA** (Bosnia and Herzegovina) said his delegation could support only option 1 for article 7 *bis*, namely, automatic jurisdiction over all three core crimes. A uniform approach to the core crimes should be retained in article 7, and his delegation therefore supported option 1 for paragraph 2. It preferred option 1 for article 10 on the role of the Security Council but believed that options 1 and 2 could be combined to form a composite text, including a provision to ensure the protection of witnesses and the preservation of evidence during any suspension of the Court's action by the Security Council.

41. Option 1 for article 12, on the *proprio motu* powers of the Prosecutor, was the only possible solution, and already contained sufficient safeguards. On article xx, his delegation believed that elements of crime should be guidelines only and should not prevent the entry into force of the Statute. Consequently, the word "shall", in paragraph 4 of that article, needed to be amended to read "should".

42. His delegation was concerned about raising the threshold for war crimes under section D of article 5 *quater*, but thought that if a different threshold had to be established, the wording proposed by the delegation of Sierra Leone would be acceptable. Regarding the list of crimes in article 5 *quater*, he shared the regret expressed by the representative of Slovenia over the exclusion of the reference to civilians and civilian objects within United Nations safe areas. On article 7, he supported the Slovenian proposal that the phrase "the State that has custody of the accused or suspect" should be amended so as to refer to the State in whose territory the accused was present.

43. **Mr. BELINGA EBOUTOU** (Cameroon) said that article 18, paragraph 3 (a) and (b), raised the problem of complementarity. The questions as to who should decide that proceedings had not been conducted independently, and on the basis of what criteria, also arose. Those two subparagraphs should be deleted, along with the words "unless the proceedings in the other court" that immediately preceded them.

44. For article 12, further improvements needed to be made to dispel any remaining ambiguity. Paragraph 1 of option 1 might read "The Prosecutor may initiate a preliminary investigation in the following circumstances", with those circumstances enumerated thereafter. On article 10, his delegation favoured the Security Council's involvement. The idea that the Court could not restrict or violate the prerogatives of the Security Council had been

reflected in a working paper submitted by his delegation (A/CONF.183/C.1/L.39). Cameroon therefore favoured option 1, which preserved the prerogatives of the Security Council as well as the autonomy of the Court. For article 7 *bis* on acceptance of jurisdiction, his delegation was inclined to favour option 2.

45. On article 5, exclusion of the crime of aggression would be a grave omission. His delegation wished to propose a formulation to serve as a basis for the search for consensus to read: "The jurisdiction of the Court shall cover the most serious crimes of concern to the international community as a whole. The Court shall have jurisdiction in accordance with this Statute with respect to the following crimes: the crime of genocide, crimes against humanity, war crimes and the crime of aggression, whose elements will be adopted by the Assembly of States Parties." Such a formulation would refocus participants' attention on the expectations of the international community.

46. **Mr. TOMKA** (Slovakia) said his delegation, too, would have welcomed inclusion of the crime of aggression among the crimes within the jurisdiction of the Court under article 5. However, that matter should now be left for the review conference. Concerning article 5 *quater* on war crimes, Slovakia had strongly favoured the third option set out in the earlier discussion paper A/CONF.183/C.1/L.53. Since there seemed to be very little support for option 1, his delegation believed it should be deleted.

47. Concerning article xx, elements of crimes should not be binding on the Court but should simply serve as guidelines. The International Criminal Tribunals for the Former Yugoslavia and for Rwanda had been able to function effectively without any provisions relating to the elements of crime. Similarly, the Court would be able to function perfectly well on the basis of the Statute. Paragraph 4 of article xx should be deleted.

48. The order of articles 7 and 7 *bis* should be reversed. His delegation favoured automatic jurisdiction, and considered that an opt-in formula for crimes against humanity and war crimes would be the worst possible solution, because it would discourage States from accepting obligations. There was no reason to make a distinction between preconditions to the exercise of jurisdiction over genocide and over crimes against humanity and war crimes: the paragraph on preconditions for genocide should be applicable to the two other categories of crimes. Regarding article 7 *ter*, the introductory phrase "If the acceptance of a State that is not a Party to this Statute is required under article 7" should be replaced by the words "If the acceptance of a State that is not a Party to the Statute is a precondition to the exercise of its jurisdiction under article 7", as acceptance by a non-State party could not be required under article 7.

49. Slovakia had a slight preference for option 1 on the role of the Security Council but could also accept option 2, provided that a provision concerning preservation of evidence, along the lines proposed by Belgium in document A/CONF.183/C.1/L.7, was included. Article 10 could form part of a package deal on jurisdictional issues, as could article 12, for which his delegation preferred option 1.

50. **Ms. DOBRAJA** (Latvia) expressed support for the statement made by the representative of Austria on behalf of the European Union. With regard to article 5, she said that, like the overwhelming majority of delegations, Latvia was disappointed at the fact that the crime of aggression was not to be covered by the Statute. A resolution or clause in the Final Act should be drafted to reflect the views of the majority in that regard. Concerning jurisdiction, her delegation favoured option 1 in articles 7 and 7 *bis*. On article xx, Latvia supported the views expressed by the representative of Canada. On the role of the Security Council, it supported option 1 for article 10. As for the role of the Prosecutor, Latvia favoured option 1 for article 12.

51. **Ms. DOSWALD-BECK** (Observer for the International Committee of the Red Cross) said that acceptance of jurisdiction was a fundamental issue. Would-be war criminals must realize that, if they were not tried at the

national level, the likelihood was that they would be tried at the international level. The Court must thus have automatic jurisdiction over war crimes and crimes against humanity, not just over genocide. Her organization was particularly concerned at the suggestion that there should be no universal jurisdiction for war crimes, given that all the States present were parties to the Geneva Conventions of 1949, which provided for compulsory universal jurisdiction over grave breaches. Following the Second World War, war criminals had been tried on the basis of such universal jurisdiction. Suggestions that universal jurisdiction was a utopian dream were thus the opposite of the truth. Under international law, every State had the right, and most had the duty, to prosecute or extradite suspected war criminals. Any form of additional consent, such as an opt-in precondition for the exercise of the Court's jurisdiction, might give the impression that States could lawfully protect war criminals from prosecution. That would be a retrograde step for international law and would severely limit the Court's effectiveness.

52. With regard to armed conflicts not of an international character, she pointed out that under the new threshold added to section D, many conflicts, and indeed most internal armed conflicts, would not be covered, and that many atrocities would thus not be triable under the Statute. Furthermore, many of the acts listed in section D were recognized as crimes by customary law. It was therefore most important that that section should not be omitted.

53. **THE CHAIRMAN** said that the Committee of the Whole had thus concluded its consideration of the Bureau proposal contained in document A/CONF.183/C.1/L.59.

The meeting rose at 10.50 p.m.

UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

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ORIGINAL: ENGLISH

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 37th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Tuesday, 14 July 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)

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V.98-57490 (E)

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The meeting was called to order at 3.10 p.m.

STATEMENT BY THE MINISTER FOR FOREIGN AFFAIRS OF ITALY

1. **Mr. DINI** (Minister for Foreign Affairs of Italy) said that not since the adoption of the United Nations Charter in San Francisco had the United Nations set itself such an ambitious goal as the drafting of the Statute for the International Criminal Court. He was sure that all present were conscious of their own personal responsibility to history and to the world. None could fail to sense that what was at stake was the legitimacy of the United Nations itself as a body capable of establishing rules and principles that were consonant with the times. All must be aware of their responsibility to future generations. He trusted that the United Nations Secretary-General would participate personally in the concluding phase of the Conference, given his personal standing and the contribution he could make to ensuring a successful conclusion.

2. Difficulties had understandably emerged. The aim was to consolidate an international community underpinned by the primacy of the individual. The institution of the Court would prevent national sovereignty from being used as a convenient shield behind which violence and outrage were committed. Human rights would henceforth be protected by an international jurisdiction superimposed on national jurisdiction. The vital balance to be struck between national prerogatives and international demands could not be at the expense of the independence, authority and effectiveness of the institution that was about to be brought into existence.

3. There was manifest public concern that the Conference should bring its work to fruition. Intense emotions had been generated by recent conflicts which ignored the traditional rules of war and were revealing undreamed- of reserves of ferocity and brutality.

4. Crucial decisions were about to be taken. In the negotiations, Italy had aimed high from the start, taking into account the expectations of the public, but had also borne in mind the need to seek acceptable compromises on the various issues involved.

5. The Statute of the new Court was to be signed in Rome on 18 July by the representatives of all participating countries. The opportunity to make a fundamental stride forward in the history of the United Nations must not be allowed to slip away.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/WGIC/L.11/Add.2 and Corr.1, L.11/Add.3 and Corr.1, L.15 and Corr.1)

Part 9 of the draft Statute (*continued*)

6. **Mr. MOCHOCHOKO** (Lesotho), Chairman of the Working Group on International Cooperation and Judicial Assistance, introduced the Group's reports in documents A/CONF.183/C.1/WGIC/L.11/Add.2 and Corr.1 and L.11/Add.3 and Corr.1. Document A/CONF.183/C.1/WGIC/L.11/Add.2 and Corr.1 contained a number of proposed provisions for the consideration of the Committee. In connection with additional paragraph 2 for article 90 *quater*, he pointed out that article 90 *quater* itself had been forwarded to the Committee of the Whole in the Group's previous report and was to be found in document A/CONF.183/C.1/WGIC/L.15/Corr.1.

7. Regarding document A/CONF.183/C.1/WGIC/L.11/Add.3, the attention of the Committee of the Whole was drawn in particular to paragraph 2, indicating amendments proposed to provisions previously transmitted to the Committee.

8. He commended the provisions contained in the reports to the Committee of the Whole with the recommendation that they should be forwarded to the Drafting Committee.

9. **Mr. AL AWADI** (United Arab Emirates), supported by **Mr. Khalid Bin Ali Abdullah AL-KHALIFA** (Bahrain), said that paragraph 4 of article 91 as it appeared in document A/CONF.183/C.1/WGIC/L.11/Add.3 would give the Prosecutor the right to take certain measures without the approval of the State concerned, which was incompatible with the principle of complementarity. The Prosecutor should have the agreement of the State party which he or she wished to visit. The paragraph should be redrafted in order to take into account the right of the State party concerned to approve the Prosecutor's opening an investigation or travelling to its territory.

10. **Mr. MOCHOCHOKO** (Lesotho), Chairman of the Working Group on International Cooperation and Judicial Assistance, said that the proposed text represented a balanced compromise between competing views on the issue. It had been realized that the Prosecutor could not travel to any State without that State's consent, but it would have made the provision too cumbersome to spell out all the mechanisms that could be used in such circumstances.

11. **Mr. MADANI** (Saudi Arabia) expressed his delegation's reservations in respect of article 91 as it stood.

12. **Mr. RAMA RAO** (India), referring to paragraph 2 of document A/CONF.183/C.1/WGIC/L.11/Add.2/Corr.1, said he wished to reiterate his delegation's position that the phrase which had been placed in square brackets should be deleted.

13. **Mr. AL-BAKER** (Qatar) fully endorsed the views expressed by the representatives of the United Arab Emirates, Bahrain and Saudi Arabia.

14. **The CHAIRMAN** suggested that article 91 should be considered further by the Working Group. The remaining provisions could be submitted to the Drafting Committee.

15. *It was so decided.*

ADOPTION OF A CONVENTION AND OTHER INSTRUMENTS DEEMED APPROPRIATE AND OF THE FINAL ACT OF THE CONFERENCE (*continued*) (A/CONF.183/2/Add.1; A/CONF.183/C.1/L.49/Rev.1/Add.1)

16. **Mr. RAMA RAO** (India), speaking as Coordinator, introduced document A/CONF.183/C.1/L.49/Rev.1/Add.1. It contained recommendations, based on informal consultations, concerning two subparagraphs of paragraph 4 of the draft resolution on the establishment of the proposed Preparatory Commission, to be annexed to the Final Act. For subparagraph (a), agreement had been reached on a text on the understanding that there would be a footnote to take into account the views of certain delegations. With regard to subparagraph (f), it had been agreed that the brackets could be removed. The Committee of the Whole might wish to refer the two subparagraphs to the Drafting Committee.

17. *It was so decided.*

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.64-L.68; A/CONF.183/C.1/WGPM/L.2/Add.7 and Corr.1)

Report of the Drafting Committee

18. **The CHAIRMAN** invited the Chairman of the Drafting Committee to introduce that Committee's report on Parts 1, 3, 4, 9 and 11 of the draft Statute (A/CONF.183/C.1/L.64-L.68).

19. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, said that the Committee consisted of 25 delegations representing all the geographic areas and various legal systems of the world. Under the established rules, it did not deal with matters of substance but was responsible for ensuring that the text as a whole was a homogeneous and cohesive one which avoided ambiguities and matters which were not clear. A great deal of time had been spent ensuring consistency of expression and clarity throughout the text.

20. **The CHAIRMAN** thanked the Chairman of the Drafting Committee and its members for their efforts.

21. **Mr. GÜNEY** (Turkey) said that the proposed text for article 22 raised a substantive issue. The proposed draft did not reflect the agreement reached during the discussions that had taken place on the proposal to combine the original articles 8 and 22. In that connection, he drew attention to what he had said at the 30th meeting of the Committee of the Whole.

22. **Mr. YAÑEZ-BARNUEVO** (Spain), supported by **Mr. HAMDAN** (Lebanon) and **Mr. BAKER** (Israel), suggested that article 22 should be considered along with article 8 in the context of Part 2.

23. **The CHAIRMAN** said that the matter would be considered further at the next meeting.

Parts 5, 6 and 8 of the draft Statute (*continued*)

24. **Ms. FERNANDEZ de GURMENDI** (Argentina), Chairman of the Working Group on Procedural Matters, introduced the Group's latest report (A/CONF.183/C.1/WGPM/L.2/Add.7 and Corr.1), submitting a number of proposed provisions for Parts 5, 6 and 8 of the Statute.

25. **The CHAIRMAN** asked whether he could take it that the Committee of the Whole agreed to refer the text of the articles contained in the report of the Working Group to the Drafting Committee.

26. *It was so decided.*

The meeting rose at 4.05 p.m.

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 of 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.47/Add.2 and L.73; A/CONF.183/C.1/WGAL/L.2/Add.1; A/CONF.183/C.1/WGE/L.14/Add.2; A/CONF.183/C.1/WGIC/L.11/Add.4 and Corr.1)

Preamble to the draft Statute (*continued*)

1. **Mr. SLADE** (Samoa), Coordinator for the Preamble, said that, as a result of further consultations, agreement had now been reached on a text for the Preamble, set out in document A/CONF.183/C.1/L.73.

2. **The CHAIRMAN** asked whether she could take it that the Committee of the Whole agreed to refer the text contained in document A/CONF.183/C.1/L.73 to the Drafting Committee.

3. *It was so decided.*

Article 20 (*continued*)

4. **Mr. SALAND** (Sweden), Chairman of the Working Group on Applicable Law, introducing the Group's second report (A/CONF.183/C.1/WGAL/L.2/Add.1), said that after intensive consultations on article 20, paragraph 3, it had been decided to propose the inclusion of a definition of the word "gender" in the article in which it appeared for the first time, namely the proposed article 5 *ter* on "Crimes against humanity". The proposed definition would become paragraph 3 of article 5 *ter*, and, whenever the word "gender" appeared subsequently in the Statute, it would be accompanied by a footnote referring to the definition in article 5 *ter* (see footnote 2 in document A/CONF.183/C.1/WGAL/L.2/Add.1).

5. The Group's consideration of article 20 was now concluded, and he suggested that it could be forwarded to the Drafting Committee.

6. **Mr. AL AWADI** (United Arab Emirates) thought that it would be preferable not to have footnotes, but to include the text in the body of the article concerned.

7. However, footnote 1 to article 20, paragraph 3, in document A/CONF.183/C.1/WGAL/L.2/Add.1 stated that some delegations had been of the view that the paragraph should end with the words "human rights"; in other words, consensus had not in fact been reached. Further discussion was needed before the text could be transmitted to the Drafting Committee.

8. **Mr. SALAND** (Sweden), Chairman of the Working Group on Applicable Law, said that it could be left to the Drafting Committee to decide whether the content of footnote 2 should be included in the article itself.

9. With regard to footnote 1, he hoped that, in view of the shortage of time, the text could be referred to the Drafting Committee: it would always be possible to come back to the matter at a later stage.

10. **Mr. CHUKRI** (Syrian Arab Republic) supported the views expressed by the representative of the United Arab Emirates.

11. **Mr. PIRAGOFF** (Canada) said that the text contained in the document was the product of lengthy discussions and represented a carefully-crafted compromise. All delegations had had an opportunity to state their positions, and he did not think anything would be gained by re-opening the debate.

12. **Ms. SHAHEN** (Libyan Arab Jamahiriya), **Mr. ASSHAIBANI** (Yemen) and **Mr. MADANI** (Saudi Arabia) associated themselves with the statement made by the representative of the United Arab Emirates.

13. **Ms. SHARRAF** (Costa Rica) said it had been her understanding that agreement had been reached on the wording of article 20, paragraph 3. If that was not the case, however, the best solution might be to delete all references to gender from the text of the Statute.

14. **Mr. SALAND** (Sweden), Chairman of the Working Group on Applicable Law, said that, if the proposed text was accepted, the footnote 2 wording could instead be included in the text of paragraph 3 of article 20, so that it would read "... grounds such as gender as defined in article 5 *ter* ...".

15. **The CHAIRMAN** said that, if she heard no objection, she would take it that the Committee of the Whole agreed that the report should be forwarded to the Drafting Committee, with the suggestion that a reference to the definition of gender might be incorporated in paragraph 3 of article 20 instead of appearing in a footnote.

16. *It was so decided.*

Part 9 of the draft Statute (*continued*)

17. **Mr. MOCHOCHOKO** (Lesotho), Chairman of the Working Group on International Cooperation and Judicial Assistance, introduced his Group's report in document A/CONF.183/C.1/WGIC/L.11/Add.4 and Corr.1.

18. **Mr. VERGNE SABOIA** (Brazil), said that he wished to refer to the proposed deletion of paragraph 3 (b) of article 87, concerning nationality, and to footnote 2 in document A/CONF.183/C.1/WGIC/L.11/Add.4 with the addition in document A/CONF.183/C.1/WGIC/L.11/Add.4/Corr.1. In view of the footnote, Brazil could agree that the report should be forwarded to the Drafting Committee, but reserved the right to revert to the question, particularly in the light of the decision taken on the issue of reservations.

19. **Mr. FADL** (Sudan), referring to article 37, paragraph 3 (b), and article 91, paragraph 4, said that the constitutions of a number of countries, including his own, prohibited the surrender of nationals. His delegation hoped that the Court, once established, would take that difficulty into account.

20. **Mr. AL AWADI** (United Arab Emirates) thought that the footnotes to article 87, paragraph 3 (b), and article 91, paragraph 4, should be included in the Statute, or their content incorporated in the articles themselves.

21. **Mr. NATHAN** (Israel) said that his delegation had accepted the deletion of paragraph 3 (b) of article 87 in a spirit of compromise. However, under Israel's domestic law the extradition of nationals under any extradition arrangement was prohibited. That point would have to be covered in any reservation to the Statute.

22. **Ms. SHAHEN** (Libyan Arab Jamahiriya) said she wished to record her delegation's reservation on the deletion of paragraph 3 (b) of article 87, in view of the fact that the prohibition of the surrender of nationals was one of the most important provisions in her country's legislation. She endorsed the statements made by the representatives of the United Arab Emirates and the Sudan.

23. **Mr. BOUGUETAIA** (Algeria) said that his country's Constitution and legislation prohibited the extradition of nationals. Algeria therefore wished to record its reservation on the deletion of paragraph 3 (b) of article 87, pending a final decision as to the issue of reservations in general.

24. **Mr. JOSIPOVIĆ** (Croatia) said that, as far as the surrender or extradition of persons was concerned, his delegation's view was that the requirements of the Statute should prevail over any national legislation or constitutional provisions. If the laws of a State were not in compliance with the Statute in that respect, the State could change its laws, as Croatia itself had done in order to meet the requirements of the International Tribunal for the Former Yugoslavia.

25. His delegation regretted that no provision had been made in Part 9 of the Statute empowering the Court to issue a binding order if a State party failed to comply with a request for cooperation.

26. **Ms. MEKHEMAR** (Egypt), **Mr. MADANI** (Saudi Arabia) and **Mr. AL-SA'AIDI** (Kuwait) supported the statement made by the representative of the United Arab Emirates.

27. **Mr. KROKHMAL** (Ukraine) associated his delegation with those speakers who had drawn attention to the importance of the footnote mentioning that some States reserved their position with respect to the deletion of paragraph 3 (b) of article 87.

28. **The CHAIRMAN** said that note had been taken of the reservations of delegations and of their desire to raise the matter at a later stage.

29. She took it that the Committee of the Whole agreed to refer the provisions contained in the report to the Drafting Committee.

30. *It was so decided.*

Part 10 of the draft Statute (*continued*)

31. **Ms. WARLOW** (United States of America), Chairman of the Working Group on Enforcement, introduced the Group's report in document A/CONF.183/C.1/WGE/L.14/Add.2 and said that the Group had now concluded its work.

32. **The CHAIRMAN** asked whether she could take it that the Committee of the Whole agreed to refer the proposed text for article 101 contained in the report to the Drafting Committee.

33. *It was so decided.*

Part 11 of the draft Statute (*continued*)

34. **Mr. RAMA RAO** (India), Coordinator for Parts 2, 11 and 12, introducing document A/CONF.183/C.1/L.47/Add.2, pointed out that paragraph 2 (f) of article 102 had been reformulated in the light of the decisions taken in relation to article 86.

35. **The CHAIRMAN** asked whether she could take it that the Committee of the Whole agreed to refer the text in document A/CONF.183/C.1/L.47/Add.2 to the Drafting Committee.

36. *It was so decided.*

The meeting rose at 4.10 p.m.

UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

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20 November 1998

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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 39th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Wednesday, 15 July 1998, at 6 p.m.

Chairman: Mr. P. KIRSCH (Canada)
later: Ms. FERNANDEZ de GURMENDI (Argentina) (Vice-Chairman)
later: Mr. P. KIRSCH (Canada) (Chairman)

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V.98-57492 (E)

99-81220 (E)

The meeting was called to order at 6.25 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.64, L.65/Rev.1, L.66 and L.67/Rev.1)

Report of the Drafting Committee (*continued*)

1. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced the first part of the Committee's report, in document A/CONF.183/C.1/L.64, containing its proposed text for Part 1 of the draft Statute.

2. *The Drafting Committee's text for Part 1 of the draft Statute was adopted.*

3. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.65/Rev.1 on Part 3 of the draft Statute. The title, "General principles of criminal law", did not mean that the intention was to set forth all the general principles of criminal law; Part 3 would merely state the general principles of criminal law contained in the Statute.

4. Article 22 was being called "Non-retroactivity *ratione personae*", to differentiate the concept from that of jurisdiction *ratione temporis*, which was covered in article 8.

5. **Mr. YAÑEZ-BARNUEVO** (Spain) wondered whether the word "principles" in the title should not be replaced by "provisions".

6. **Mr. SALAND** (Sweden) thought that it might be preferable to retain the existing title for Part 3, rather than change the title at the present stage.

7. **Mr. HAMDAN** (Lebanon) said that article 22 raised issues that his delegation considered should be discussed in connection with article 8, in Part 2 of the draft Statute.

8. After a discussion in which **Mr. PATEL** (Zimbabwe), **Mr. GÜNEY** (Turkey) and **Mr. AL ANSARI** (Kuwait) took part, **Mr. TOMKA** (Slovakia), supported by **Mr. YAÑEZ-BARNUEVO** (Spain) and **Mr. GÜNEY** (Turkey), proposed that the Committee should adopt the report of the Drafting Committee on Part 3 on the understanding that action on article 22 would be postponed until article 8 was considered.

9. *It was so decided.*

10. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.67/Rev.1 on Part 4 of the draft Statute.

11. **Mr. KROKHMAL** (Ukraine) said that his delegation had reservations regarding article 37, paragraph 8. The question of geographical representation had not yet been satisfactorily resolved.

12. **Mr. HAMDAN** (Lebanon) said that his delegation had reservations on article 43, paragraph 2. Lebanon believed that the Prosecutor and the Deputy Prosecutors should come from different legal systems and not simply be of different nationalities.

13. His delegation also had reservations on article 45, paragraph 4, allowing use of the expertise of gratis personnel offered by States parties, intergovernmental organizations or non-governmental organizations. Lebanon opposed the acceptance of such offers by the Prosecutor, believing that it would be a violation of the principle of independence of staff.

14. **Mr. AL-THANI** (Qatar), **Mr. KERMA** (Algeria), **Mr. MATRI** (Libyan Arab Jamahiriya), **Ms. MEKHEMAR** (Egypt), **Mr. Khalid Bin Ali Abdullah AL-KHALIFA** (Bahrain) and **Mr. AL SHEIKH** (Saudi Arabia) said their delegations likewise had reservations on article 43, paragraph 2, and article 45, paragraph 4.

15. **Mr. TOMKA** (Slovakia) thought that it would be important for article 41, paragraph 3, to be compatible with article 36. All judges serving on a full-time basis should be treated equally.

16. **Mr. MAGALLONA** (Philippines) noted that, under article 36, paragraph 1, all judges would be elected as full-time members of the Court. The requirement not to engage in any occupation of a professional nature should apply to all judges.

17. **Mr. YEE** (Singapore), referring to article 40, paragraph 1, said it was extremely important that members of the Trial Chamber and the Pre-Trial Chamber should have criminal trial experience.

18. **Ms. CLAVERIE DE SCIOLLI** (Guatemala), referring to article 43, paragraph 9, thought that there should be a reference to the definition of the term "gender" to be included in Part 2.

19. *Ms. Fernández de Gurmendi (Argentina), Vice-Chairman, took the Chair.*

20. **Mr. CHUKRI** (Syrian Arab Republic), **Mr. Sayyid Said Hilal AL-BUSAIDY** (Oman), **Mr. BAIGZADEH** (Islamic Republic of Iran) and **Mr. ABDELKADER MAHMUD** (Iraq) expressed reservations on article 43, paragraph 2, and article 45, paragraph 4.

21. **Mr. AL-THANI** (Qatar) said that his country had reservations on the last subparagraph in article 41.

22. **Mr. SKELEMANI** (Botswana) said that he had difficulty with the proposed text for article 41, paragraph 3.

23. Referring to article 46, paragraph 2 (b), he expressed the view that the term "absolute majority" required clarification.

24. **Mr. MATSUDA** (Japan) thought that the reference to the Rules of Procedure and Evidence in article 49 should be replaced by a reference to the agreement on privileges and immunities which was to be drafted by the Preparatory Commission after the adoption of the Statute.

25. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, agreed with that suggestion.

26. Referring to the questions raised regarding article 41, paragraph 3, he pointed out that, as decided by the Committee of the Whole, article 36 would provide for all judges to be elected as full-time members of the Court but for some of them not to be required to work on a full-time basis.

27. **Mr. CHIMIMBA** (Malawi), referring to article 49, asked whether the Chairman of the Drafting Committee thought that the reference to the agreement on privileges and immunities should also be included in the paragraph dealing with the treatment of counsel, experts and others.

28. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, replied in the affirmative.

29. **Mr. YAÑEZ-BARNUEVO** (Spain) thought that article 41, paragraph 3, should perhaps refer to a "remunerated occupation". The purpose was presumably to preserve the independence of judges by excluding the possibility of their receiving payment from a State or an institution.

30. **Mr. TOMKA** (Slovakia) felt that further thought was needed on the proposed provisions concerning the conditions of service of judges. One option might be to have article 36, paragraph 1, say that all judges were to be "available to serve full-time from the commencement of their terms of office". There was no need to speak in article 36 of judges being available "at the seat of the Court".

31. **Mr. RWELAMIRA** (South Africa), Coordinator for Part 4, said that the concern had been not to cause unnecessary expense for the Court by requiring all judges to be present permanently at the seat of the Court. It had also been felt that judges who were not required to be at the seat of the Court should be free to engage in other professional occupations, or should be eligible for some kind of allowance under article 50.

32. **Mr. VERGNE SABOIA** (Brazil) said his understanding was that paragraphs 1 and 2 of article 41 applied to all judges, whereas paragraph 3 applied to judges who were not required to be permanently at the seat of the Court, and who would be allowed, always subject to the provisions of paragraphs 1 and 2, to engage in some other activity.

33. After some further discussion in which **Mr. BELLO** (Nigeria), **Mr. TOMKA** (Slovakia) and **Ms. WILMSHURST** (United Kingdom) took part, **the CHAIRMAN** said that, if she heard no objection, she would take it that the Committee of the Whole wished to adopt Part 4 with the changes in article 49 suggested by the Chairman of the Drafting Committee and on the understanding that further thought would be given to the drafting of articles 36 and 41.

34. *It was so decided.*

35. *Mr. P. Kirsch (Canada) resumed the Chair.*

36. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.66 on Part 11 of the draft Statute, consisting of article 102. Paragraph 2 (f) was still pending, but he suggested that the Committee of the Whole should adopt Part 11 subject to review of paragraph 2 (f) at a later time.

37. *It was so decided.*

The meeting rose at 7.55 p.m.

UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/C.1/SR.40
20 November 1998

ORIGINAL: ENGLISH

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 40th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Thursday, 16 July 1998, at 10 a.m.

Chairman: Mr. P. KIRSCH (Canada)

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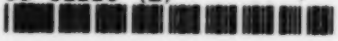
V.98-57493 (E)

99-81226 (E)



The meeting was called to order at 10.25 a.m.

ORGANIZATION OF WORK

1. **The CHAIRMAN** said that in view of the fact that time was running out and that work remained to be done, it was the intention of the Bureau to put together in a single document the texts of the articles adopted by the Drafting Committee, the texts formulated by the Working Groups and the Coordinators and the texts that had emerged through consultations, in order to facilitate the work of the Committee of the Whole. It was suggested that the Committee should meet again the following day to take a decision on that document. At the present meeting, the Committee of the whole would consider a report from the Working Group on Procedural Matters on Parts 5, 6, 7 and 8 of the draft Statute and a report from the Coordinator for Part 12.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.78; A/CONF.183/C.1/WGPM/L.2/Add.8)

Parts 5, 6, 7 and 8 of the draft Statute (continued)

2. **Ms. FERNANDEZ de GURMENDI** (Argentina), Coordinator of the Working Group on Procedural Matters, introducing the Group's last report (A/CONF.183/C.1/WGPM/L.2/Add.8), said that the Group was transmitting to the Committee for consideration a series of provisions that had been left pending. She thanked all delegations which had participated in the Group for their cooperation.

3. **Mr. HARRIS** (United States of America) thought that, in order to correctly reflect what had been agreed, the words "shall hold a hearing in the absence of the accused" in paragraph 1 *bis* of article 61 should be amended to read "may hold a hearing in the absence of the accused".

4. *It was so decided.*

5. **Mr. BUCHET** (France) thought that, after the word "may", the words "at the request of the Prosecutor or on its own motion" should be added.

6. *It was so decided.*

7. **The CHAIRMAN** said he took it that, with those amendments, the Committee agreed to refer the provisions contained in the report to the Drafting Committee.

8. *It was so decided.*

Part 12 of the draft Statute

9. **Mr. RAMA RAO** (India), Coordinator, introducing document A/CONF.183/C.1/L.78, said that the financing of the Court was a question of critical importance which had been the subject of delicate and sensitive negotiations. An agreed solution had finally been arrived at.

10. Article 103 was a new provision; the original article 103 had become article 103 *bis*. A new element was that the provisions covered not only the expenses of the Court but also those of meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, if any. The travel costs of those attending the Assembly would not, of course, be covered.

11. The scope of article 104 had likewise been extended to cover the Assembly of States Parties. He also drew attention to a correction to be made in the *chapeau*.*

12. Articles 105 and 106 represented a delicate compromise. The whole text submitted was the result of lengthy negotiations and he urged the Committee to accept it as it stood.

13. **Mr. ASSHAIBANI** (Yemen) said that the Arabic version of article 105 should be brought into line with the English version.

14. **The CHAIRMAN** asked whether, subject to that understanding, the Committee agreed to refer the articles recommended by the Coordinator to the Drafting Committee.

15. *It was so decided.*

16. **Ms. SUNDBERG** (Sweden) said that the text of Part 12 had been painstakingly negotiated, with substantial concessions made on both sides, but she particularly regretted that no agreement had been reached on the financing of the Court in its initial phase. In her view, the wording of article 104 (b) should be interpreted as making it possible for the Court to seek funds from the United Nations during its initial phase, should that be necessary in order to ensure its proper functioning. Concerning article 105, her delegation's view was that the expression "as additional funds" should be interpreted as meaning that voluntary contributions should not be used for meeting core expenses of the Court: those expenses should be met by assessed contributions.

17. **Ms. CHATOOR** (Trinidad and Tobago) associated herself with the views expressed by the representative of Sweden. She deeply regretted that more had not been achieved, but was prepared to go along with the text proposed in order to help achieve the objectives of the Conference.

The meeting rose at 10.55 a.m.

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*See document A/CONF.183/C.1/L.78/Corr.1, circulated subsequently.

UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/C.1/SR.41
20 November 1998

ORIGINAL: ENGLISH

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 41st MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Thursday, 16 July 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)
later: Mr. MOCHOCHOKO (Lesotho)

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Agenda item		*Paragraphs*
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12	Adoption of a convention and of other instruments deemed appropriate and of the final act of the Conference (*continued*)	24-25
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997 (*continued*)	26-52

The meeting was called to order at 3.15 p.m.

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V.98-57494 (E)

99-81232 (E)

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr. 1; A/CONF.183/C.1/L.47/Add.2, L.68/Rev.2, L.84 and L.85; A/CONF.183/C.1/WGP/L.14/Add.3 and Corr.1)

Part 7 of the draft Statute (continued)

1. **Mr. FIFE** (Norway), Coordinator of the Working Group on Penalties, introduced the Group's report in document A/CONF.183/C.1/WGP/L.14/Add.3 and Corr.1. It contained a proposed text for article 79 *bis* and a statement that the Group recommended the President of the Conference should make in connection with the fact that the proposed Statue would not provide for the death penalty.

2. **Mr. VILLAGRAN KRAMER** (Guatemala) said that the proposals in the report resolved a complex problem for States whose legislation included the death penalty. He urged their acceptance by the Conference.

3. **Mr. YEE** (Singapore) said that it was an important principle of criminal justice that the penalty should be commensurate with the gravity of the crime. Singapore believed that the Court should be able to impose the most effective penalty, including the death penalty, for the crimes under its jurisdiction. That was why it had co-sponsored the proposal providing for the death penalty in document A/CONF.183/C.1/WGP/L.13. No delegation had claimed that the death penalty was prohibited under international law. Paragraph 2 of article 6 of the International Covenant on Civil and Political Rights allowed the sentence of death to be imposed for the most serious crimes. The right to life, recognized in article 3 of the Universal Declaration of Human Rights, must not be interpreted in a way that would threaten the right of individuals and of the community, including the international community, to security.

4. Conscious of the need to move the negotiations on in order to ensure the early establishment of a strong, effective and independent court, his delegation had supported the efforts of the Coordinator which had culminated in the compromise package now before the Committee. It wished to place on record its understanding that the decision not to include the death penalty in the Statute would in no way affect the sovereign rights of States to determine the appropriate legal measures and penalties to combat serious crimes effectively, including the right to impose the death penalty in accordance with international safeguards. The debate on that issue in the Conference had clearly demonstrated that there was no international consensus on the abolition of the death penalty.

5. **Mr. MAHARAJ** (Trinidad and Tobago) said that his country remained committed to the establishment of an international criminal court and had played a leading role in the initiation and development of the process that had led up to the present Conference.

6. The legislation of Trinidad and Tobago, like that of more than ninety other countries, provided for the death penalty for murder. His Government could not support the exclusion of the death penalty from those provided for in the Statute, and the proposals in the Working Group's report would go only some way to meeting the position of Trinidad and Tobago and of the States of the Caribbean Community (CARICOM). However, his Government would not stand in the way of the finalization of the text concerning penalties.

7. **Mr. WOLDWOLDE** (Ethiopia) said that crimes like genocide, war crimes and crimes against humanity called for penalties commensurate with their gravity. Exclusion of the death penalty for such crimes was unacceptable.

8. **Mr. HAMDAN** (Lebanon) said that Lebanon's legislation provided for the death penalty. His delegation would have wished capital punishment to be provided for in the Statute, but it accepted the compromise.

9. **Mr. Abdulmalik Ahmed AL SHEIKH** (Saudi Arabia) associated his delegation with the position of Lebanon.

10. **Mr. UBALIJORO** (Rwanda) endorsed the statements of the representatives of Singapore, Ethiopia and Trinidad and Tobago. The exclusion of the death penalty could not affect the right of sovereign States to apply it in aggravated circumstances, particularly in situations involving great loss of life.

11. **Mr. JERMAN** (United Arab Emirates) said that his country also applied the death penalty and considered that it should have been provided for in the Statute, but would not stand in the way of the proposed compromise.

12. **Mr. AL-AMERY** (Qatar) supported the statement of the representative of Lebanon. Capital punishment was provided for in his country's legislation, but his delegation would not break the consensus.

13. **Mr. ABDALLA AHMED** (Iraq) said that the fact that capital punishment was not provided for in the Statute would have no legal effect whatever on Iraq's national legislation.

14. *The Working Group's proposals were approved.*

Report of the Drafting Committee (continued)

15. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.68/Rev.2, containing the proposed provisions for Part 9 of the Statute. It was recommended that some of the provisions should be left in abeyance pending the approval of Part 2 of the Statute.

16. **Mr. HAMDAN** (Lebanon) said that his delegation had reservations concerning the proposed wording in article 90 allowing the Court to cooperate with a requesting State in connection with conduct that constituted a serious crime under the national law of that State, but not necessarily a crime within the jurisdiction of the Court.

17. **Mr. YEE** (Singapore), referring to paragraph 3 of article 90, drew attention to the footnote to the words "fundamental legal principle" in article 90, paragraph 2 *bis*, in document A/CONF.183/C.1/WGIC/L.11/Add.3, to the effect that the proviso in question would cover laws preventing the freezing or seizure of certain types of property, in which case other alternatives such as seizure of the proceeds of sale or disposal should be relied on. His delegation had agreed to the relevant text on that understanding.

18. **The CHAIRMAN** said that he took it that the Committee of the Whole agreed to adopt the Drafting Committee's recommendations for Part 9.

19. *It was so decided.*

20. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced documents A/CONF.183/C.1/L.84 and L.85, relating to Parts 7 and 8 of the draft Statute.

21. *The Drafting Committee's text was adopted.*

22. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, recalled that Part 11 of the draft Statute, consisting of article 102, had been adopted at the 39th meeting of the Committee of the Whole with the exception of paragraph 2 (f). He drew attention to the text for paragraph 2 (f) in document A/CONF.183/C.1/L.47/Add.2, and recommended that it should be adopted.

23. *It was so decided.*

ADOPTION OF A CONVENTION AND OTHER INSTRUMENTS DEEMED APPROPRIATE AND OF THE FINAL ACT OF THE CONFERENCE (*continued*) (A/CONF.183/2/Add.1; A/CONF.183/C.1/L.83)

Report of the Drafting Committee on the final act

24. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced the report in document A/CONF.183/C.1/L.83, containing the text proposed by that Committee.

25. *The Drafting Committee's text for the final act, including its annex, was adopted with a minor editorial amendment.*

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.78, L.82 and L.86-L.88; A/CONF.183/DC/R.31 and R.191-R.194)

Report of the Drafting Committee (*continued*)

26. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, said that the Committee of the Whole had recently approved document A/CONF.183/C.1/L.78, containing the recommendations of the Coordinator for Part 12. Perhaps the Drafting Committee would be authorized to do minor editing.

27. *It was so decided.*

28. **Mr. GADYROV** (Azerbaijan) said that his delegation wished to reserve its position on the reference in article 105 to voluntary contributions from individuals, corporations and other entities.

29. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced documents A/CONF.183/DC/R.191-R.194, on Part 13 of the draft Statute.

30. *The Drafting Committee's text was adopted.*

31. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/DC/R.31, containing a proposed text for the definition of the crime of genocide in article 5.

32. *The Drafting Committee's text was adopted.*

The meeting was suspended at 3.55 and resumed at 4.30 p.m.

33. *Mr. Mochochoko (Lesotho), Vice-Chairman, took the Chair.*

34. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.86 on Part 10 of the draft Statute, and drew attention to some minor typographical errors.

35. In regard to article 97, the question had been raised whether it was intended to exclude the right of a person who had completed a sentence to return to his or her country of origin, as provided for under international law. If that was not intended, article 97 should perhaps be amended.

36. **Mr. HAMDAN** (Lebanon) suggested that wording should be introduced to allow such a person to choose which State to be transferred to, provided that that State agreed or was legally obliged to receive him or her.

37. After considerable discussion, **the CHAIRMAN** said that, if he heard no objection, he would take it that the Committee of the Whole agreed to amend article 97 in the manner suggested by the representative of Lebanon.

38. *It was so decided.*

39. **Mr. AL-CHEIKH** (Syrian Arab Republic), referring to article 94, said that the provisions as they stood failed to take into account the concern expressed by many delegations regarding the proposal to require the Court to take into account, *inter alia*, the nationality of the sentenced person in designating the State of enforcement. He wished to express his delegation's reservations on the provision concerned.

40. **The CHAIRMAN** asked if he could take it that the Committee wished to adopt the Drafting Committee's text for Part 10, as amended.

41. *It was so decided.*

42. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.87 on Part 5 of the draft Statute.

43. **Mr. GADYROV** (Azerbaijan), referring to article 54, asked whether the term "gender" should not be accompanied by a cross-reference to the definition of "gender" in Part 2.

44. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, agreed and said that the text should be amended accordingly. He also noted that certain provisions in Part 5 were dependent on decisions to be taken on articles in Part 2. He recommended that the Committee of the Whole should adopt Part 5 and delegate to the Drafting Committee the task of ensuring that, once Part 2 was approved, the appropriate changes were made in Part 5.

45. **Mr. AL-CHEIKH** (Syrian Arab Republic) expressed his delegation's reservations regarding the provisions in article 54 allowing the Prosecutor to stop an investigation in the supposed interests of justice.

46. After some further discussion, **the CHAIRMAN** asked if he could take it that the Committee of the Whole agreed to adopt the recommendations of the Chairman of the Drafting Committee.

47. *It was so decided.*

48. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.88 on Part 6 of the draft Statute, and drew attention to some minor errors.

49. **Mr. AL-CHEIKH** (Syrian Arab Republic) expressed his delegation's reservations on the provisions concerning trial *in absentia*.

50. *With minor drafting changes, the Drafting Committee's text for Part 6 was adopted.*

51. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, drew attention to document A/CONF.183/C.1/L.82, containing a proposed text for the preamble to the Statute. The text had since been further modified, and the final text proposed was the following:

"*Conscious* that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

"*Mindful* that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

"*Recognizing* that such grave crimes threaten the peace, security and well-being of the world,

"*Affirming* that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

"*Determined* to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes,

"*Recalling* that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

"*Reaffirming* the Purposes and Principles of the Charter of the United Nations,

"*Determined* to these ends and for the sake of present and future generations to establish an independent permanent International Criminal Court in relationship with the United Nations system with jurisdiction over the most serious crimes of concern to the international community as a whole,

"*Emphasizing* that the International Criminal Court established under the Statute shall be complementary to national criminal jurisdictions,

"*Resolved* to guarantee lasting respect for and the enforcement of international justice,

"*Have agreed as follows*:".

52. *The proposed text was adopted.*

The meeting rose at 5.35 p.m.

UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/C.1/SR.42
20 November 1998

ORIGINAL: ENGLISH

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 42nd MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Friday, 17 July 1998, at 7 p.m.

Chairman: Mr. P. KIRSCH (Canada)

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-	Report of the Committee	37-42

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The meeting was called to order at 7.15 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTION 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/C.1/L.76 and Corr.1 (French only), Add.1, Add.2 and Corr.1, Add.3-4, Add.5 and Corr.1 and Corr.2 (French only), Add.6 and Corr.1, Add.7-8, Add.9 and Corr.1, Add.10-13* and Add.14, L.81, L.90, L.94 and L.95)

1. **The CHAIRMAN** thanked delegations for the cooperation, patience and understanding they had shown over the past few days when the Conference had been under pressure to complete its task on time. He suggested that delegations reserve any statements of position they might wish to make for the plenary, which was the highest organ of the Conference and thus the best place for such statements to be recorded.

2. He welcomed Mr. Bos (Netherlands), former Chairman of the Preparatory Committee, who had hitherto been unable to attend the Conference owing to illness.

3. **Mr. BOS** (Netherlands) thanked participants and the Secretariat for their tokens of support, which reflected the spirit of solidarity that had developed among all those involved in the work of the Preparatory Committee and of the Conference itself.

4. The establishment of an international criminal court would represent a great step forward for the international community. In his view, the possibilities of compromise had now been fully exploited, and no purpose would be served by further delay, since the positions of States were already known. He urged the Conference to adopt the draft Statute by consensus.

5. **The CHAIRMAN** drew attention to the text for the Statute of the International Criminal Court proposed by the Bureau of the Committee of the Whole and contained in documents A/CONF.183/C.1/L.76 and Corr.1 (French only), Add.1, Add.2 and Corr.1, Add.3-4, Add.5 and Corr.1 and Corr.2 (French only), Add.6 and Corr.1, Add.7-8, Add.9 and Corr.1, Add10-13* and Add.14. The text reflected a very delicate balance between the views of delegations, and it was essential that that balance be preserved. It was the recommendation of the Bureau that the text should be adopted as a complete package.

6. **Mr. LAHIRI** (India) said that although his delegation would very much have liked to associate itself with the text proposed, it was unable to do so because two of India's major concerns had not been accommodated. The first related to the role of the United Nations Security Council and the second to the list of weapons whose use would constitute a war crime.

7. He drew attention to document A/CONF.183/C.1/L.94, which contained amendments proposed by his delegation to article 8, concerning war crimes, as it appeared in document A/CONF.183/C.1/L.76/Add.2. Their effect would be to include weapons of mass destruction, i.e. nuclear, chemical and biological weapons, among the weapons whose use would constitute a war crime. The absence of any mention of such weapons in the draft represented a retrograde step.

8. A second Indian proposal, contained in document A/CONF.183/C.1/L.95, related to the role of the Security Council. Article 16, concerning the deferral of investigation or prosecution at the request of the Security Council, would be deleted, along with subparagraph (b) of article 13 on exercise of jurisdiction, and there would be a

consequential amendment in article 12 concerning preconditions to the exercise of jurisdiction. The role for the Security Council proposed in the draft was unacceptable.

9. **Mr. FIFE** (Norway) said that the Bureau's proposal represented a compromise formula designed to achieve broad support and reflecting as far as possible a consensus approach. A package, almost by definition, would contain elements which displeased some delegations. It was essential to maintain the integrity of the package offered in order to avoid destroying the balance achieved with such difficulty and making it impossible to achieve the ultimate goal of an independent, effective and credible international court.

10. His delegation therefore proposed that no action be taken on the proposals submitted by the delegation of India.

11. **The CHAIRMAN** said that, under the rules of procedure of the Conference, two delegations would be permitted to speak in favour of the no-action motion put forward by Norway and two against it. He could therefore give the floor to a maximum of four speakers.

12. **Mr. CHIMIMBA** (Malawi) said that while he appreciated the rationale behind the Indian proposals, he considered that the issues they raised had already been fully discussed, and therefore supported the Norwegian proposal. The delegations of Angola, Botswana, Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe associated themselves with his delegation's view.

13. **Mr. MAQUIEIRA** (Chile) said that the Indian proposals had been debated at length but had not received the level of support to warrant inclusion in the text. His delegation thus also supported the Norwegian proposal.

14. **The CHAIRMAN** said that, since no delegations had expressed a wish to speak against the Norwegian proposal, he would invite the Committee to vote on it.

15. *The Norwegian proposal was adopted by 114 votes to 16, with 20 abstentions.*

16. **Mr. GONZALEZ GALVEZ** (Mexico) said that his delegation did not intend to block the consensus which seemed to be emerging on the text proposed by the Bureau, but wished to draw attention to its proposal in document A/CONF.183/C.1/L.81.

17. Mexico considered that the Statute was not the right place to resolve differences of interpretation concerning the powers of the principal organs of the United Nations, particularly in view of the fact that the United Nations itself was now undergoing a process of far-reaching reform which could include changes in the role and powers of the Security Council. To link the Court solely to the Security Council, many of whose decisions were limited by the right of veto, was in Mexico's view not only a grave political error but also a decision which was without foundation in law.

18. Mexico considered that any treaty establishing an international court which included clauses subordinating the juridical activities of that court to decisions taken by another body would not be in conformity with article 53 of the Vienna Convention on the Law of Treaties, which stated that a treaty which at the time of its conclusion conflicted with a peremptory norm of international law (*jus cogens*) was void. Any such clauses would contravene the principle of the independence of the judiciary and the right of everyone to a hearing by an independent tribunal, which were both peremptory norms enshrined in article 10 of the Universal Declaration of Human Rights, article 14 of the International Covenant of Civil and Political Rights, and paragraphs 1 and 2 of the Basic Principles on the

Independence of the Judiciary approved by the General Assembly in resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. They would also attribute to the Security Council functions and powers not conferred on it by the Charter.

19. Mexico would not insist that its proposed amendment be put to the vote, but the non-inclusion of its tenor would affect Mexico's eventual decision on the Statute as a whole.

20. **Mr. SCHEFFER** (United States of America) said his delegation deeply regretted that following four years of work it faced the end of the Conference with profound misgivings. The draft Statute was strong on paper but weak in reality. It did not contain the necessary opt-out provision to attract many States, and it attempted to exercise jurisdiction over the official actions of non-parties, a significant departure from the established principles of international law. It burdened the Court with a *proprio motu* prosecutor, an institutional weakness which could result in the Court's being overwhelmed with complaints and embroiled in controversy. Consequently, his delegation was obliged to request consideration of two proposals for amendment of the draft Statute, originally submitted in documents A/CONF.183/C.1/L.70 and L.90.

21. The United States supported the Geneva Conventions and acknowledged the importance of universality of jurisdiction in its proper context for the effective vindication of international law. However, the proposed Statute took the principle of universal jurisdiction far outside any acceptable context. Moreover, the attempt to impose the jurisdiction of the Court on States which did not become parties to the Statute would violate an elementary rule set out in the Vienna Convention on the Law of Treaties. The proposed Statute would also seek to place States parties in a privileged position vis-à-vis non-party States, by permitting prosecution of officials and nationals of non-parties while shielding officials and nationals of parties from prosecution for the same crimes.

22. His delegation's first proposal, in line with that in document A/CONF.183/C.1/L.70, was that article 12 on preconditions to the exercise of jurisdiction should be amended by the deletion in paragraph 2 of the words "one or more of", so that acceptance of jurisdiction by both the State on whose territory the crime had occurred and the State of nationality of the accused would be required. Under his delegation's second proposal, the content of paragraph 1 of article 7 *ter* in document A/CONF.183/C.1/L.90 would be inserted as a new paragraph following paragraph 2 of article 12. Paragraph 2 of article 7 *ter* in document A/CONF.183/C.1/L.90 coincided with the present paragraph 3.

23. He requested that his delegation's proposals be put to the vote in accordance with the rules of procedure of the Conference.

24. **Mr. FIFE** (Norway) said that in his view the package proposed by the Bureau was both credible on paper and responsible in reality. In the light of the urgent need to maintain the integrity of the package and to adopt the text as a whole, he proposed that no decision be taken on the proposals of the United States representative.

25. **The CHAIRMAN** said that, as in the previous case, permission to speak on the no-action motion just put forward by the delegation of Norway would be granted to two representatives in favour of it and two opposing it, whereupon the motion would be put to the vote. He would therefore ask the other speakers on his list to defer their statements.

26. **Mr. SALAND** (Sweden) said that his delegation believed it important to maintain the integrity of the text, whose delicate balance could be seriously upset if amendments were introduced at the present stage. Sweden therefore supported the Norwegian proposal.

27. **Mr. AL-THANI** (Qatar) said that his delegation had difficulty in accepting the package proposed, which had been inadequately considered. He accordingly endorsed the views expressed by the United States representative.

28. **Mr. LIU Daqun** (China) said that article 12, concerning the issue of jurisdiction, was the most important article in the whole Statute. As now drafted, it would mean violating the sovereignty of States parties, and would not only impose obligations on States not parties, contrary to the Vienna Convention on the Law of Treaties, but would in fact place greater obligations on them than on the parties. China was therefore opposed to the Norwegian proposal.

29. **Mr. MIKAELSEN** (Denmark) said that Denmark regarded the text as a package that should be adopted as a whole and without amendments. His delegation thus supported the motion put forward by Norway.

30. **The CHAIRMAN** invited the Committee to vote on the Norwegian proposal.

31. *The Norwegian proposal was adopted by 113 votes to 17, with 25 abstentions.*

32. **Monsignor MARTIN** (Holy See) said that he wished to explain his vote concerning the Indian proposals. His delegation condemned the use of nuclear weapons and other weapons of mass destruction, and fully understood the position of the delegation of India on that question. He hoped that when the Statute came to be reviewed attention could be given to that important issue, and that States would move forward rapidly to a balanced, multilateral and universal agreement for the elimination of all nuclear weapons. However, in the absence of agreement on that question at the moment, it had wished to support the package proposed by the Bureau.

33. **Mr. MATRI** (Libyan Arab Jamahiriya) said his delegation considered that to give the proposed prerogatives to the Security Council would reduce the Court to completely dependent status. His delegation also found it contradictory to regard the use of certain types of weapons as a crime but not the use of the most destructive and dangerous weapons of all. It was for that reason that his delegation had voted to maintain the Indian proposal.

34. **Mr. BOUGUETAIA** (Algeria) said that although the proposals by India and the United States would have met some of his delegation's concerns, he had responded to the Chairman's appeal so as not to re-open the debate. However, he wished to express his deep regret that the Committee had been obliged to resort to a vote.

35. **The CHAIRMAN** asked if the Committee was ready to adopt the draft Statute as contained in documents A/CONF.183/C.1/L.76 and Corr.1 (French only), Add.1, Add.2 and Corr.1, Add.3-4, Add.5 and Corr.1 and Corr.2 (French only), Add.6 and Corr.1, Add.7-8, Add.9 and Corr.1, Add.10-13* and Add.14.

36. *The documents were adopted on the understanding that the Arabic version would be corrected in the light of the English version.*

REPORT OF THE COMMITTEE (A/CONF.183/C.1/L.92)

37. **Mr. NAGAMINE** (Japan), Rapporteur, introduced the draft report of the Committee of the Whole (A/CONF.183/C.1/L.92).

38. **Mr. KROKHMAL** (Ukraine) noted that the draft resolution submitted jointly by the delegations of Belarus, Kazakhstan and Ukraine on the question of equitable geographical distribution (A/CONF.183/C.1/L.57) had not been reflected in paragraph 28 of chapter III of the draft report.

39. **The CHAIRMAN** said that that omission would be rectified.

40. **He took it that, subject to that amendment, the Committee agreed to adopt the report of the Committee of the Whole contained in document A/CONF.183/C.1/L.92.**

41. *It was so decided.*

42. **The CHAIRMAN** said that the Committee had completed its work.

The meeting rose at 9.20 p.m.